# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1899.**

No. 614. 258.

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AC M. MASON, AUDITOR OF THE CITY OF ST. LOUIS, MISSOURI, PLAINTIFF IN ERROR,

*vs.*

E STATE OF MISSOURI *EX REL.* JAMES McCAFFERY, AWRENCE D. KINGSLAND, AND GEORGE J. KOBUSH, ELATORS.

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ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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FILED APRIL 23, 1900.

(17,728.)

# (17,728.)

## SUPREME COURT OF THE UNITED STATES.

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ISAAC M. MASON, AUDITOR OF THE CITY OF ST. LOUIS, MISSOURI, PLAINTIFF IN ERROR,

*vs.*

THE STATE OF MISSOURI *EX REL.* JAMES McCAFFERY, LAWRENCE D. KINGSLAND, AND GEORGE J. KOBUSH, RELATORS.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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INDEX.


| | Original. | Print. |
|---|---|---|
| Writ of error | 1 | 1 |
| Return to writ | 1½ | 1 |
| Citation | 2 | 2 |
| Service of citation | 2½ | 2 |
| Assignment of errors | 3 | 2 |
| Petition for mandamus | 12 | 8 |
| Statement of account, August, 1899 | 16 | 13 |
| Statement of account, September, 1899 | 16 | 13 |
| Statement of supplies | 17 | 14 |
| Alternative writ of mandamus | 17 | 14 |
| Order filing return, granting time to plead, &c. | 21 | 18 |
| Return of defendant to alternative writ | 21 | 19 |
| Reply to return | 35 | 34 |
| Order granting leave to take testimony | 35 | 34 |
| Evidence on behalf of relator offered | 36 | 34 |
| Evidence on behalf of respondent offered | 37 | 35 |


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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 8, 1900.

| | Original | Print |
|---|---|---|
| Relator's Exhibit 1—Certified copy of act of the General Assembly of the State of Missouri to provide for the registration of voters, &c. | 40 | 40 |
| 2—Ordinance making appropriation for certain expenses, &c., approved August 7, 1899 | 57 | 61 |
| Respondent's Exhibit A—House bill No. 760, Fortieth General Assembly, being an act to provide for the registration of voters, &c., as originally introduced | 59 | 62 |
| B—Engrossed copy of house bill No. 760, Fortieth General Assembly, being an act to provide for the registration of voters, &c., as printed by order of April 15, 1899 | 92 | 81 |
| E—House bill No. 760, Fortieth General Assembly, being an act to provide for the registration of voters, &c., as printed by order of senate of May 22, 1899 | 113 | 100 |
| F—Certified copy of act to provide for the registration of voters, &c., approved June 19, 1899 | 133 | 120 |
| C—Certified copy of the journal of the senate of the Fortieth General Assembly so far as it relates to house bill No. 760 | 149 | 139 |
| D—Abstract of house journal | 153 | 145 |
| Motion of relator to strike out evidence | 156 | 149 |
| Argument and submission | 157 | 150 |
| Stipulation as to evidence | 157 | 150 |
| Order granting peremptory mandamus | 158 | 151 |
| Opinion | 159 | 151 |
| Concurring opinion | 180 | 164 |
| Order filing motion for rehearing | 181 | 165 |
| Motion for rehearing | 182 | 165 |
| Order denying motion for rehearing | 190 | 170 |
| Order allowing writ of error, &c. | 191 | 171 |
| Assignment of errors | 191 | 171 |
| Bond on writ of error | 200 | 176 |
| Clerk's certificate | 202 | 178 |

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1899, thereof, between The State of Missouri *ex rel.* James McCaffery, Laurence D. Kingsland, and George J. Kobush, relators, and Isaac M. Mason, auditor of the city of St. Louis, Missouri, defendant, a manifest error hath happened, to the great damage of the said Isaac M. Mason, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., *on the* not exceeding thirty days from and after the date of the citation herein, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 31st day of March, in the year of our Lord nineteen hundred.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

{Seal of the United States Circuit Court for the Western District of Missouri, Central Division.}

H. C. GEISBERG,
*Clerk Circuit Court United States, Western District of Missouri, Central Division.*

Allowed by—
JAMES B. GANTT,
*Chief Justice.*

1¼ [Endorsed:] No. —. United States circuit court, western district of Missouri, central division. State of Mo. *ex rel.* James McCaffery *et al.*, rel., *vs.* Isaac M. Mason, defendant. Writ of error. Filed Mar. 31, 1900. Jno. R. Green, clerk.

*Return to Writ*

UNITED STATES OF AMERICA, *Western District of Missouri*, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified tran-

script of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 18th day of April, 1900.

JNO. R. GREEN, *Clerk.*

2 The United States of America to James McCaffery, Laurence D. Kingsland, and George J. Kobush, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the supreme court of Missouri, wherein Isaac M. Mason, auditor of the city of St. Louis, Missouri, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of Missouri, this 31st day of March, in the year of our Lord nineteen hundred.

JAMES B. GANTT,
*Chief Justice.*

2½ [Endorsed:] Supreme court of Missouri. State of Missouri *ex rel.* James Caffery *et al.*, rel., *vs.* Isaac M. Mason, defendant. Citation. Filed Mar. 31, 1900. Jno. R. Green, clerk.

UNITED STATES OF AMERICA, } *ss:*
*Central Division of the Western District of Missouri,* }

I hereby acknowledge due service of the within citation this 2nd day of April, A. D. 1900.

WM. J. STONE,
*Attorney for Defendant in Error.*

3 In the Supreme Court of the United States, October Term, 1899.

ISAAC M. MASON, Auditor of the City of St. Louis, Missouri, Plaintiff in Error,
*vs.*
THE STATE OF MISSOURI *ex Rel.* JAMES McCaffery, Lawrence D. Kingsland, and George J. Kobush, Defendants in Error.

Error to the Supreme Court of the State of Missouri.

*Assignment of Errors and Prayer for Reversal.*

Now comes Isaac M. Mason, plaintiff in error in the above-entitled cause, and prays the court to reverse the judgment rendered by the honorable the supreme court of the State of Missouri in the cause

lately pending in said last-named court, wherein The State of Missouri *ex rel.* James McCaffery, Lawrence D. Kingsland, and George J. Kobush were relators and the said plaintiff in error, Isaac M. Mason, auditor of the city of St. Louis, Missouri, was respondent, on account of the many and manifest errors committed by said court to the prejudice of the plaintiff in error, as will appear by an inspection of the record thereof, and especially for the following reasons, which are hereby set out as the

*Assignment of Errors.*

I.

The act of the General Assembly of the State of Missouri, entitled "An act to provide for the registration of voters in cities now having or which may hereafter have 300,000 inhabitants or more; to provide for the creation of a board of election commissioners,
4 provide for its appointment, and define its duties; to govern elections in such cities, defining offenses, and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19th, 1899, is in conflict with the 1st section of the 14th amendment to the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States, and denies to citizens of the United States within the jurisdiction of and citizens of the State of Missouri of the equal protection of the laws.

II.

Said act of June 19th, 1899, denies to citizens of the United States who are inhabitants and citizens of the city of St. Louis, and within the jurisdiction of the State of Missouri, the equal protection of the laws.

III.

The decision of the supreme court of the State of Missouri in the above-entited case, in sustaining said act of June 19th, 1899, as a valid and constitutional enactment, is a denial to the citizens of St. Louis and of this plaintiff in error, who are within the jurisdiction of the State of Missouri, of the equal protection of the laws and of their privileges and immunities as citizens of the United States.

5

IV.

The said supreme court of the State of Missouri erred in refusing to hold that the bill No. 760, which passed the senate of Missouri by a call of yeas and nays, as required by the constitution of the State of Missouri, was a different bill from that which passed the house of representatives, and erred in refusing to hold that the bill signed by the president of the said senate, according to the senate journal, was a different bill from that which passed the house, to wit, a bill under the following title, to wit: "An act to provide for the regis-

tration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

V.

The court erred in holding that in the absence of a protest pointing out in what particulars the constitution of the State of Missouri was violated during the passage of the bill, it would be presumed that the legislature was not remiss in its duties in that regard, although the journals may have failed affirmatively to record the performance of such duty; and further erred in commenting on the protest which was filed to the act as a local and not a general act, as if the members of the senate who filed this protest, having based it on this ground alone, were precluded, or this respondent was precluded, from making the points urged in said court against the law, in the face of the fact that the members of the senate had no opportunity to protest against the signing of a bill under the
6 title of the bill passed by the house, and in face of the fact that it appears affirmatively by the senate journal that the only title ever read or heard of in the senate was the title as hereinbefore set forth.

VI.

The court erred in not holding that the senate, having no notice of the change in title of the bill, the members of the senate could not protest against the signature thereof by its president on the ground that the title had been changed or was other than that which, according to its own journal, the bill appears to have.

VII.

The court erred in holding that section 31 of article IV of the constitution of the State of Missouri, providing for taking the count on the final passage of a bill by yeas and nays, was mandatory, and then holding that the journal of the senate showed that the bill which was passed in accordance with that provision of the constitution when it was affirmatively shown by the senate journal that the bill passed by the senate was different from that passed by the house.

VIII.

The court erred in holding that the title to the bill is an immaterial part of an act, under the constitution of the State of Missouri, and that the fact that the title of the bill as passed by the house was entirely different from the title of the bill that was passed by the senate and signed by the president of the senate, as affirmatively shown by the journals of both houses, was not contrary to the constitution of the State of Missouri.

IX.

The court erred in refusing to hold that section 9 of article VIII of the constitution of the State of Missouri prescribed the methods under which registration laws could be passed in the State of Missouri as being mandatory, and directing the only method by which said registration laws could be passed.

7

X.

The court erred in refusing to hold that the limitations of section 5 of article VIII of the constitution of the State of Missouri limited the legislature to passing the general act for the registration of voters in all cities having over 100,000 inhabitants.

XI.

The court erred in refusing to hold that section 5 of article VIII of the constitution of the State of Missouri created a constitutional classification in cities and counties for registration purposes—1st, into cities and counties of over 100,000 population, without regard to the maximum limit in which cities and counties there must be registration; 2nd, cities of over 25,000 and under 100,000 population, in which there may be registration, and, 3rd, the rest of the State, in which there shall be no registration—and that said section was a mandatory rule controlling the action of the legislature and requiring it to pass general laws on the subject of registration applicable to all cities in the State containing over 100,000 inhabitants.

XII.

The court erred in refusing to hold that article VIII, section 5, of the constitution of the State of Missouri was an affirmative enactment of a new rule, which implied a negative of whatever was not included or is different, and that by the language used therein the thing was limited to be done in a particular form or manner and included a negative that it should not be done otherwise.

XIII.

The court erred in refusing to hold that in construing section 5 of article VIII of the constitution of the State of Missouri that when the constitution defines the circumstances under which a right may be exercised or penalty imposed the specification

8 is an implied prohibition against legislative interference to add to the condition or to extend the penalty to other cases.

XIV.

The court erred in holding that in the face of section 5 of article VIII of the constitution of Missouri the legislature could make special laws for registration purposes applicable to the city of St. Louis, having 300,000 or more inhabitants, alone.

XV.

The court erred in not holding that the "Nesbit bill," which the court held to be constitutional, expressly repealed the act of May 31st, 1895, and left all cities under 300,000 inhabitants in the State of Missouri without any registration act whatever, in the face of the mandatory requirements of section 5 of article VIII of the said constitution.

XVI.

The court erred in holding that the "Nesbit bill" repealed the act of May 31, 1895, so far as regards cities covered by said "Nesbit bill," and having more than 300,000 inhabitants, leaving the act of May 31, 1895, in force as to cities having 100,000 inhabitants or more, up to 300,000 inhabitants, thereby creating a different rule of registration as to some of the cities in the State of Missouri having over 100,000 from the rule of registration prescribed for the city of St. Louis.

XVII.

The court erred in not holding that if the act of May 31st, 1895, was repealed, then the Nesbit law, leaving no law in force as to cities between 100,000 and 300,000, was unconstitutional.

XVIII.

The court erred in holding that the act of May 31st, 1895, was repealed so far as concerns the "Nesbit" act, thereby holding that said act of May 31st, 1895, as amended by the Cardwell act,
9 applies to cities of over 100,000 and up to 300,000 inhabitants, in face of the fact that this ruling is contrary to the first section of the 14th amendment to the Constitution of the United States, plead in the returns of the respondent and urged by his counsel in their brief and on oral argument, and again presented to the court on a motion for rehearing herein, for the reason that by section 9 *by* the act of May 31st, 1895, judges and clerks of election are to be appointed by a board of election commissioners and reported to the circuit court of the State for confirmation, with the right to any interested citizen to file objection to such judges and clerks, which objections were to be heard and determined by the court on a day fixed for that purpose, whereas by section 8 of the Nesbit act the board of election commissioners are empowered to appoint four judges of election and two clerks without any supervisions whatever and with no right to the citizens of St. Louis to object thereto or to be heard thereon before any court or judicial body; and, further, that section 31 of the act of May 31st, 1895, makes provision for any voter whose name is refused registration or who is stricken from the registration list to apply to the circuit court for reinstatement or registration, which application is to be heard summarily and determined by the court, and if found qualified the name is placed upon the registry list, and if refused the applicant is given the right of appeal to the supreme court or the

court of appeals of the State, whereas under the Nesbit act, by section 21, the board of election commissioners are made the board of appeal to hear applications for reinstatement and registration, and no appeal whatever to the courts is provided, and every citizen of St. Louis is denied his day in court; all of which is contrary to the said 14th amendment to the Constitution of the United States; and, further, that other differences between the said Nesbit act and the act of May 31st, 1895, apparent upon comparison of the two acts, which show that the citizens of cities and counties of
10 the State of Missouri having 300,000 or more inhabitants are denied equal protection by the laws provided for cities having 100,000 up to 300,000, and their privileges and immunities as citizens of the United States are abridged, notwithstanding the provision of section 5 of article VIII of the constitution of Missouri, providing for the registration in cities and counties having a population of over 100,000, and notwithstanding section 3 of article IV of the constitution of Missouri, providing that in all other cases where general laws can be made applicable no local or special law shall be enacted, and whether the general law could have been made applicable in any case is declared to be a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject.

XIX.

The court erred in holding that in the passage of the Nesbit bill through the two houses of the General Assembly of the State of Missouri sections 25, 26, 27, 29, 32, and 38 of article IV of the constitution of the State of Missouri had not been violated and in holding that said sections are not mandatory.

XX.

The court erred in holding that the said act of June 19th, 1899, was not in violation of section 5 of article VIII of the constitution of Missouri.

XXI.

The court erred in holding that said act of June 19th, 1899, was not in violation of sections 16 and 53 of article IX of the constitution of Missouri.

XXII.

The court erred in holding the said act of June 19th, 1899, to be a constitutional law under section 5 of article VIII and section 53 of article IX of the constitution of Missouri.

XXIII.

The act of June 19th, 1899, is in violation of the foregoing cited provisions of the constitution of Missouri and of the Consti-
11 tution of the United States.

XXIV.

The court erred in overruling a motion for rehearing filed by plaintiff in error, which should have been sustained for the reasons in said motion for rehearing set out.

All of which is respectfully submitted.

B. SCHNURMACHER,
*City Counsellor.*
GEO. D. REYNOLDS,
NOBLE AND SHIELDS,
MORTON JOURDAN,
*Attorneys for Plaintiff in Error.*

11½ [Endorsed:] Isaac M. Mason, auditor of the city of St. Louis, Missouri, plaintiff in error, *vs.* The State of Missouri *ex rel.* James McCaffery *et al.*, defendants in error. Prayer for reversal and assignment of errors. Filed Mar. 31, 1900. Jno. R. Green, clerk. Ben. Schnurmacher, city counselor; Geo. D. Reynolds, Noble & Shields, and Morton Jourdan, for plaintiff in error.

12 STATE OF MISSOURI, *set:*

In the Supreme Court of Missouri.

Be it remembered that heretofore, to wit, on the 5th day of January, 1900, there was filed in the clerk's office of the supreme court of the State of Missouri a petition for mandamus, wherein The State of Missouri at the relation of James McCaffery, Lawrence D. Kingsland, and George J. Kobusch were relators, and Isaac M. Mason, auditor of the city of St. Louis, was respondent, which said petition is in words and figures as follows, to wit:

STATE OF MISSOURI, *ss:*

In the Supreme Court, January Sitting, 1900.

| | |
|---|---|
| STATE OF MISSOURI *ex Rel.* JAMES MCCAFFERY, Lawrence D. Kingsland, and George J. Kobusch, Plaintiffs, *vs.* ISAAC M. MASON, Defendant. | Petition for Mandamus. |

Now comes the State of Missouri on the relation of James McCaffery, Lawrence D. Kingsland and George J. Kobusch, and states that said relators are now and for more than five years have been resident citizens of the State of Missouri, and of the city of St. Louis in said State; and further states that the defendant, Isaac M. Mason, is also a resident citizen of the said city of St. Louis, and that he is now, and ever since the 20th day of August, 1899, has been, the auditor of the said city of St. Louis, duly elected, qualified and acting as such.

For a cause of action herein, against the said defendant, the plaintiff states that the said James McCaffery, Lawrence D. Kings-

land and George J. Kobusch, the relators herein, are election commissioners in and for the said city of St. Louis, severally appointed as such by the governor of the State of Missouri under the authority conferred upon him by an act of the General Assembly of said State, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, to provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and election therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19th, 1899; that said named relators were so appointed election commissioners by the governor as aforesaid on the — day of August, 1899, for a term of four years therefrom, subject to the advice and consent of the senate of said State when the same shall be again in session, said appointments having been made during the vacation of the senate; that said relators severally accepted said appointments, and afterwards on the — day of August, 1899, duly qualified as such election commissioners according to the law in such cases made and provided, and that said relators do now constitute, and ever since the 21st day of August, 1899, have constituted, the board of election commissioners for the said city of St. Louis; and as such it is their right and duty to do and per-
13 form all the things required by said mentioned act to be done and performed by said board of election commissioners, and to exercise all the rights, powers and privileges conferred upon the election commissioners by the provisions of said act.

The plaintiff states that the said relators, McCaffery, Kingsland and Kobusch, as said election commissioners, are now, and ever since the 21st day of August have been, in the possession of the office, records, files and property set apart for, used by, and belonging to the said board of election commissioners in said city of St. Louis, and that they are now, and ever since the date last above named have been exercising the powers and performing the duties of such election commissioners in accordance with the statutes of this State in such cases made and provided. Plaintiff states that said election commissioners, after taking possession of their said offices on the 21st day of August, 1899, as aforesaid, and while acting as said board of election commissioners, duly appointed according to law one C. L. Hoblitzelle as deputy election commissioner, and to be *ex officio* the secretary of the said board of election commissioners; and also afterwards at different times, during the months of August and September, 1899, appointed and employed E. J. Watson, Wm. Adams, M. Buechler, Charles Conrad, C. C. Dixon, J. F. Doerbaum, George Gunsollis, M. J. Keneficke and J. H. Stussel as clerks, or clerical assistants, in the office of said election commissioners; the same being necessary to the prompt and correct performance of the duties incident to said board of election commissioners, and that said deputy election commissioners and said clerks immediately after their several appointments duly qualified as such according

to the requirements of the statute in such cases made and provided, and entered upon the duties of their respective offices.

Plaintiff further states that said election commissioners, acting as said board of election commissioners, after entering upon their offices as aforesaid, to wit: during the months of August and September, 1899, purchased certain necessary supplies for the use of said board of election commissioners, to wit: stationery, stamps, registration records, office records, towels, brooms and mops, and also incurred certain necessary incidental expenses for keys and repairs of locks, clock rental and storage of election booths and tables; that all said expenditures were necessary to the proper and efficient conduct of the office of said commissioners, and that all said expenditures were made by said election commissioners under the authority conferred upon them by the statute in such cases made and provided. Plaintiff states that the salaries or compensation of all said election commissioners, deputy election commissioner, and clerks or clerical assistants, and all said expenditures made by said board of election commissioners, were and are payable out of the treasury of the said city of St. Louis as is required by law; and that plaintiffs state that in accordance with the law, rules and regulations in such cases made and provided it was and is the duty of said board of election commissioners to make up and certify to the city auditor of said city of St. Louis stated monthly accounts, properly itemized, of the pay-rolls and other expenses of said board of election commissioners; and upon the same being so certified to the said city auditor it became, was, and is the duty of said auditor to audit said accounts in due form of law, and to issue his proper warrants for the payment thereof to the person or persons entitled thereto, so that the same may be lawfully paid out of the treasury of the said city; for plaintiff states that the salaries of said commissioners and the expenditures made by them, and the compensation due the appointees and employés of said commissioners, cannot be lawfully paid out of the said treasury until said auditor shall first audit said accounts and draw his warrants for the payment thereof.

14 Plaintiff further states that on the 29th day of September, 1899, the said board of election commissioners, in due form of law, and in accordance with the rules and regulations applicable to such cases, duly certified to the defendant herein, as the city auditor of the said city of St. Louis, three certain itemized statements or accounts to be audited by him as follows, to wit:

First. A statement or account showing separately the several sums due the commissioners, deputy commissioner and clerks or clerical assistants from said city of St. Louis for salaries or compensation due them as provided by law for services rendered by them during the month of August, 1899, amounting in the aggregate to $555.21;

Second. A statement or account showing separately the several amounts due to said commissioners, deputy commissioner and the clerks or clerical assistants of said board of election commissioners from the said city of St. Louis for the salaries or compensation due

them respectively for the month of September, 1899, amounting in the aggregate to $1,297.65;

Third. An itemized statement or account of the expenditures made by the said board of election commissioners during the months of August and September, 1899, for the use of said board, being the stationery, records, etc., hereinabove set forth, amounting in the aggregate to $1,718.71, which certified account was accompanied by the proper vouchers in each instance.

Plaintiff files herewith copies of said three statements or accounts marked as Exhibit- "A," "B" and "C."

Plaintiff states that all said named statements or accounts were duly presented to said defendant, as auditor aforesaid, on or about the first day of October, 1899; and plaintiff states that upon receiving said accounts or statements it then became and was the duty of the defendant, as said auditor, to forthwith proceed to examine and audit the said accounts and to draw his warrants therefor as aforesaid; for plaintiff says that at all the dates aforesaid there was, and now is, sufficient money in the treasury of the said city of St. Louis appropriated and set apart for the payment of the salaries of said election commissioners, deputy commissioner, and clerks or clerical assistants, and the expenses of said board, as stated and set forth in said three certified accounts. But plaintiff states that notwithstanding the premises the defendant arbitrarily and unlawfully refused to audit said accounts, or either of them or any part thereof, and still refuses to audit the same or any part thereof, or to issue or cause to be issued, any warrant whatsoever for the payment of said certified accounts, or either of them, or any part thereof, and wholly fails and refuses to perform his duty in that behalf as the city auditor of the said city of St. Louis. Plaintiff states that said defendant, as auditor, has not made to said election commissioners, or to any one, any objection to the form or sufficiency of any of said accounts so certified to him as aforesaid, but has informed the said commissioners in writing that he refuses to audit the said accounts, or any of them, on the advice of the city counsellor of the said city of St. Louis, and for no other reason. Plaintiff states that the salaries or compensation of said election commissioners, deputy commissioner, and clerks or clerical assistants of said board of election commissioners, together with the incidental expenses of said board, for the months of October and November, 1899, are also all past due and unpaid; but that said election commissioners have not certified the accounts for the same to the defendant for the reason that the defendant has declared to and informed the said commissioners that he will not audit any accounts for, or draw his warrants to pay any salaries or compensation due said election officers, or for any expenses incurred by said board of election commissioners in the conduct of their office.

15 Plaintiff states that by reason and on account of said arbitrary and unlawful action of the defendant, as auditor aforesaid, the said election commissioners, deputy commissioner, and clerks or clerical assistants have been performing their public duties since the 21st day of August, 1899, without receiving any pay

whatever for their services, and that the necessary expenses of said board of election commissioners in procuring necessary stationery, records, etc., for the proper and correct conduct of their said office remain wholly unpaid; that by reason of the premises and of the declared intention of the defendant to continue to refuse to audit future accounts of every kind which may be certified to him by said board of election commissioners the relators herein, it is made impossible for said election commissioners to efficiently and properly perform their duties and carry on and conduct their said offices; that the said unlawful conduct of the defendant is demoralizing the working force in said office, and is greatly embarrassing said election commissioners in the performance of their duties, greatly to the public detriment.

Plaintiff states that it is highly important and necessary that said election commissioners should forthwith make preparation for the registration of voters in said city, and to make such registration, and also to make all necessary provisions for holding the elections to be held in said city during the year 1900; that in the performance of this public work imposed upon them by law, it is necessary for said election commissioners to appoint judges and clerks of election, and other election officials as required by law, and to procure the necessary stationery, books, records, etc., for the proper and lawful conduct of said elections; but plaintiff says that the said election commissioners cannot properly and efficiently perform their said duties because of the said unlawful action, and threatened action, of said defendant, as auditor, in refusing to allow said election commissioners to use the public moneys appropriated and set apart for their use as aforesaid.

In view of the whole premises the plaintiff comes now and prays this honorable court to issue its writ of mandamus commanding the said defendant, as city auditor of the said city of St. Louis, to proceed forthwith to examine and audit the said three itemized accounts certified to said defendant by said board of election commissioners on the 29th day of September, 1899, as hereinbefore set forth, and to issue warrants as required by law for the payment of said accounts, or to show cause to this court why he should not do so, and the plaintiff prays the court for all such further and additional orders and judgments against said defendant as may be necessary and proper, and that the defendant be adjudged to pay the costs of this proceeding.

EDWARD C. CROW,
*Attorney General.*

WM. J. STONE, *Of Counsel.*

STATE OF MISSOURI, }
*City of St. Louis.* }

L. D. Kingsland, being duly sworn, on oath states that the matters and facts stated and set forth in the foregoing petition are true.

LAWRENCE D. KINGSLAND.

Sworn to and subscribed before the undersigned, a notary public in and for the said city of St. Louis, this 3rd day of January, 1900.
My commission as notary expires on the 31st day of May, 1903.
Witness my hand and seal this 3rd day of January, 1900.
[SEAL.] M. LOUISE HOOVER,
*Notary Public.*

16 *Election and Registration.*

The city of St. Louis to the following persons, debtor for services rendered in the office of board of election commissioners during month ending August 31st, 1899:

| Name. | Occupation. | Period. | Rate. | Amount. | We, the undersigned, acknowledge to have received from the treasurer of the city of St. Louis the sums herein specified opposite our respective names. |
|---|---|---|---|---|---|
| James McCaffery... | Chairman..... | 12 days... | $208 33 | $80 64 | |
| L. D. Kingsland.... | Commissioner... | 12 " ... | 208 33 | 80 64 | |
| G. J. Kobusch..... | " ... | 12 " ... | 208 33 | 80 64 | |
| C. L. Hoblitzelle.... | Secretary ..... | 8 " ... | 166 66 | 43 01 | |
| C. L. Hoblitzelle.... | Assistant..... | 4 2-7 ds... | 4 00 | 21 14 | 1 2-7 day overtime. |
| E. J. Watson..... | " ..... | 6 2-7 ds .. | 4 00 | 25 14 | 2 2-7 days overtime. |
| Wm. Adams..... | " ..... | 4 days ... | 4 00 | 16 00 | |
| M. Buechler..... | " ..... | 10 " ... | 4 00 | 40 00 | |
| Chas. Conrad ..... | " ..... | 4 " ... | 4 00 | 16 00 | |
| C. C. Dixon..... | " ..... | 4 " ... | 4 00 | 16 00 | |
| J. F. Doerbaum..... | " ..... | 4 " ... | 4 00 | 16 00 | |
| Geo. Gunsollus..... | " ..... | 10 " ... | 4 00 | 40 00 | |
| M. J. Kenefieke..... | " ..... | 10 " ... | 4 00 | 40 00 | |
| J. H. Stussel..... | " ..... | 10 " ... | 4 00 | 40 00 | |
| | | | | $555 21 | |

ST. LOUIS, *September 29th*, 1899.

I hereby certify, that the above account, amounting to five hundred and fifty-five and $\frac{21}{100}$ dollars, is correct and necessary.
Approved by order of the board, September 29th, 1899.
JAMES McCAFFERY, *Chairman.*

Attest: C. L. HOBLITZELLE, *Secretary.*

*Election and Registration.*

The city of St. Louis to the following persons, debtor for services rendered in the office of board of election commissioners during month ending September 30th, 1899:

| Name. | Occupation. | Period. | Rate. | Amount. | We, the undersigned, acknowledge to have received from the treasurer of the city of St. Louis the sums herein specified opposite our respective names. |
|---|---|---|---|---|---|
| James McCaffery... | Chairman..... | 1 mo..... | $208 33 | $208 33 | |
| L. D. Kingsland.... | Commissioner... | 1 " ..... | 208 33 | 208 33 | |
| G. J. Kobusch..... | " ... | 1 " ..... | 208 33 | 208 33 | |
| C. L. Hoblitzelle.... | Secretary..... | 1 " ..... | 166 66 | 166 66 | |
| M. Buechler..... | Assistant..... | 26 days... | 4 00 | 104 00 | |
| Geo. Gunsollus..... | " ..... | 26 " ... | 4 00 | 104 00 | |
| M. J. Kenefieke..... | " ..... | 26 " ... | 4 00 | 104 00 | |
| J. H. Stussel..... | " ..... | 26 " ... | 4 00 | 104 00 | |
| | | | | $1,207 65 | |

ST. LOUIS, *September 29th*, 1899.

I hereby certify, that the above account, amounting to twelve hundred and seven and $\frac{65}{100}$ dollars, is correct and necessary.

Approved, by order of the board, September 29th, 1899.

JAMES McCAFFERY, *Chairman.*

Attest: C. L. HOBLITZELLE, *Secretary.*

17 *Supplies.*

| | |
|---|---|
| Woodward & Tiernan, stationery and stamps | $61.53 |
| Bell Telephone Co., telephone service | 37.50 |
| A. A. Selkirk & Co, storage on election booths and tables | 372.18 |
| Western Union Telegraph Co., clock rental | 2.00 |
| B. Kloecker, keys, repairing locks | 6.75 |
| M. Dougherty, mops and brooms | 3.00 |
| St. Louis Toilet Supply Co., towels, etc | 5.00 |
| Con. P. Curran Printing Co., registration records | 582.50 |
| Con. P. Curran Printing Co., stationery and records | 646.25 |

And on the same day an alternative writ was ordered, directed to said respondent, said rule to be returnable on the 9th day of January, 1900; which said alternative writ is in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1899, Court in Banc.

STATE OF MISSOURI *ex Rel.* JAMES McCAFFERY, LAWRENCE D. Kingsland, and George J. Kobusch, Plaintiffs,

*vs.*

ISAAC M. MASON, Defendant.

The State of Missouri to Isaac M. Mason, auditor of the city of St. Louis, Greeting:

Whereas, it has been represented to our supreme court by petition of James McCaffery, Lawrence D. Kingsland and George J. Kobusch, that said relators are now and for more than five years have been resident citizens of the State of Missouri, and of the city of St. Louis in said State; and further states that the defendant, Isaac M. Mason, is also a resident citizen of the said city of St. Louis, and that he is now, and ever since the 20th day of August, 1899, has been, the auditor of the said city of St. Louis, duly elected, qualified and acting as such.

That the said James McCaffery, Lawrence D. Kingsland and George J. Kobusch, the relators herein, are election commissioners in and for the said city of St. Louis, severally appointed as such by the governor of the State of Missouri under the authority conferred upon him by an act of the General Assembly of said State, entitled "An act to provide for the registration of voters in cities now having or which may hereafter have three hundred thousand inhabitants

or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to
18 govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and election therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19th, 1899; that said named relators were so appointed election commissioners by the governor as aforesaid on the — day of August, 1899, for a term of four years therefrom, subject to the advice and consent of the senate of said State, when the same shall be again in session, said appointments having been made during the vacation of the senate; that said relators severally accepted said appointments, and afterwards, on the — day of August, 1899, duly qualified as such election commissioners according to the law in such cases made and provided, and that said relators do now constitute, and ever since the 21st day of August, 1899, have constituted the board of election commissioners in and for the said city of St. Louis; and as such it is their right and duty to do and perform all the things required by said mentioned act to be done and performed by said board of election commissioners, and to exercise all the rights, powers and privileges conferred upon the election commissioners by the provisions of said act; that the relators, McCaffery, Kingsland and Kobusch, as said election commissioners, are now, and ever since the 21st day of August have been, in possession of the office, records, files and property set apart for, used by, and belonging to the said board of election commissioners in said city of St. Louis, and that they are now, and ever since the date last above named have been, exercising the powers and performing the duties of such election commissioners in accordance with the statutes of this State in such cases made and provided. That said election commissioners, after taking possession of their said offices on the 21st day of August, 1899, as aforesaid, and while acting as said board of election commissioners, duly appointed according to law, one C. L. Hoblitzelle as deputy election commissioner, and to be *ex officio* the secretary of the said board of election commissioners; and also afterwards at different times, during the months of August and September, 1899, appointed and employed E. J. Watson, Wm. Adams, M. Buechler, Charles Conrad, C. C. Dixon, J. F. Doerbaum, George Gunsollis, M. J. Kennefieke and J. H. Stussel as clerks, or clerical assistants in the office of said election commissioners; the same being necessary to the prompt and correct performance of the duties incident to said board of election commissioners, and that said deputy election commissioner and said clerks immediately after their several appointments duly qualified as such according to the requirements of the statute in such cases made and provided, and entered upon the duties of their respective offices.

That said election commissioners, acting as said board of election commissioners, after entering upon their offices as aforesaid, to wit: during the months of August and September, 1899, purchased certain necessary supplies for the use of said board of election commissioners, to wit: stationery, stamps, registration records, office

records, towels, brooms and mops, and also incurred certain necessary incidental office expenses for keys and repairs of locks, clock rental and storage of election booths and tables; that all said expenses were necessary to the proper and efficient conduct of the office of said commissioners, and that all said expenditures were made by said election commissioners under the authority conferred upon them by the statute in such cases made and provided.

19 That the salaries or compensation of all of said election commissioners, and clerks or clerical assistants, and all said expenditures made by said board of election commissioners, were and are payable out of the treasury of the said city of St. Louis, as is required by law; and in accordance with the law, rules and regulations in such cases made and provided, it was and is the duty of said board of election commissioners to make up and certify to the city auditor of said city of St. Louis stated monthly accounts, properly itemized, of the pay-rolls and other expenses of said board of election commissioners; and upon the same being so certified to the said city auditor it became, was, and is the duty of said auditor to audit said accounts in due form of law and to issue his proper warrants for the payment thereof to the person or persons entitled thereto, so that the same may be lawfully paid out of the treasury of said city; that the salaries of said commissioners and the expenditures made by them, and the compensation due the appointees and employés of said commissioners, cannot be lawfully paid out of the said treasury until said auditor shall first audit said accounts and draw his warrants for the payment thereof.

That on the 29th day of September, 1899, the said board of election commissioners, in due form of law, and in accordance with the rules and regulations applicable to such cases, duly certified to the defendant herein, as the city auditor of the said city of St. Louis, three certain itemized statements or accounts to be audited by him as follows, to wit:

First. A statement or account showing separately the several sums due commissioners, deputy commissioner, and clerks or clerical assistants from said city of St. Louis for salaries or compensation due them as provided by law for services rendered by them during the month of August, 1899, amounting in the aggregate to $555.21;

Second. A statement or account showing separately the several amounts due to said commissioners, deputy commissioner, and the clerks or clerical assistants of said board of election commissioners from said city of St. Louis for salaries or compensation due them, respectively, for the month of September, 1899, amounting in the aggregate to $1,297.65;

Third. An itemized statement of accounts of the expenditures made said board of election commissioners during the months of August and September, 1899, for the use of said board, being for the stationery, records, etc., hereinabove set forth, amounting in the aggregate to $1,718.71, which certified account was accompanied by the proper vouchers in each instance.

20 That all said named statements or accounts were duly presented to said defendant, as auditor aforesaid, on or about

the first day of October, 1899; that upon receiving said accounts or statements, it then became and was the duty of the defendant, as said auditor to forthwith proceed to examine and audit the said accounts and to draw his warrants therefor as aforesaid; that at all the dates aforesaid there was, and now is, sufficient money in the treasury of the said city of St. Louis appropriated and set apart for the payment of the salaries of said election commissioners, deputy commissioners and clerks or clearical assistants, and the expenses of said board, as stated and set forth in said three certified accounts. That notwithstanding the premises the defendant arbitrarily and unlawfully refused to audit said accounts, or either of them, or any part thereof, and still refuses to audit the same or any part thereof, or to issue or cause to be issued, any warrant whatsoever for the payment of said certified accounts, or either of them, or any part thereof, and wholly fails and refuses to perform his duty in that behalf as the city auditor of the said city of St. Louis. That said defendant, as auditor, has not made to said election commissioners, or to any one, any objection to the form or sufficiency of any of said accounts so certified to him as aforesaid, but has informed the said commissioners in writing that he refuses to audit the said accounts, or any of them, on the advice of the city counsellor of the said city of St. Louis, and for no other reason; that the salaries or compensation of said election commissioners, deputy commissioners, and clerks or clerical assistants of said board of election commissioners, together with the incidental expenses of said board, for the months of October and November, 1899, are also all past due and unpaid; but that said election commissioners have not certified the accounts for the same to the defendant for the reason that the defendant has declared to and informed the said commissioners that he will not audit any accounts for, or draw his warrants to pay any salaries or compensation due said election officers, or for any expenses incurred by said board of election commissioners in the conduct of their office.

That by reason and on account of said arbitrary and unlawful action of the defendant, as auditor aforesaid, the said election commissioners, deputy commissioners, and clerks or clerical assistants have been performing their public duties since the 21st day of August, 1899, without receiving any pay whatever for their services, and that the necessary expenses of said board of election commissioners in procuring necessary stationery, records, etc., for the proper and correct conduct of their said office remain wholly unpaid; that by reason of the premises and of the declared intention of the defendant to continue to refuse to audit future accounts of every kind which may be certified to him by said board of election commissioners, the relators herein, it is made impossible for said election commissioners to efficiently and properly perform their duties and carry on and conduct their said offices; that the said unlawful conduct of the defendant is demoralizing the working force in said office, and is greatly embarrassing said election commissioners in the performance of their duties, greatly to the public detriment.

That it is highly important and necessary that said election com-

missioners should forthwith make preparation for the registration of voters in said city, and to make such registration, and also to make all necessary provisions for holding the elections to be held in said city during the year 1900; that in the performance of this public work imposed upon them by law, it is necessary for said election commissioners to appoint judges and clerks of election and other election officials as required by law, and to procure the
21 necessary stationery, books, records, etc., for the proper and lawful conduct of said elections; that the said election commissioners cannot properly and efficiently perform their said duties because of the said unlawful action, and threatened action, of said defendant, as auditor, in refusing to allow said election commissioners to use the public moneys appropriated and set apart for their use as aforesaid.

Now therefore, we being willing that full and speedy justice be done in the premises, do command you, the said Isaac M. Mason, auditor of the city of St. Louis, to forthwith examine and audit the said three itemized accounts certified to said defendant by said board of election commissioners on the 29th day of September, 1899, as aforesaid, and to issue warrants as required by law for the payment of said accounts; or that you appear and show cause before our honorable supreme court in banc, on Tuesday, January 9, 1900, why you should not do so.

In testimony whereof, I have hereunto set my hand as chief justice of the supreme court of the State of Missouri. Done at the city of Jefferson, this 5th day of January, 1900.

[SEAL.] JAMES B. GANTT,
*Chief Justice of the Supreme Court of the State of Missouri.*

Attest: JOHN R. GREEN, *Clerk.*

And afterwards, to wit, on the 8th day of January, 1900, the following proceedings were had in said cause, viz:

STATE *ex Rel.* JAS. MCCAFFERY ET AL., Rel.,
*vs.*
I. M. MASON, Resp.

Comes now the said respondent, by attorney, and files his return to the alternative writ of mandamus issued herein; and, upon motion, the said rel-tor is granted 5 days in which to plead to said return, and that this cause be set for hearing on February 6, 1900.

Which said return is in words and figures as follows, to wit:

STATE OF MISSOURI, *ss:*

In the Supreme Court, October Term, 1899.

STATE OF MISSOURI *ex Rel.* JAMES MCCAFFERY, L. D. KINGSLAND, and Geo. J. Kobusch, Plaintiffs,
*vs.*
ISAAC M. MASON, Defendant.

*Return of Defendant to Alternative Writ.*

Now comes Isaac M. Mason, defendant in the above-entitled cause, and for return to the alternative writ issued therein, says:

He admits that the relators are now, and for more than five years last past have been, resident citizens of the State of Missouri, and of the city of St. Louis in said State, and that the said defendant is also a resident citizen of said city of St. Louis, and that he now is, and ever since the 20th of August, 1899, and some time before that has been, the auditor of the said city of St. Louis, duly elected, qualified and acting as such.

He admits and avers that the relators' sole claim to be and to compose the board of election commissioners for the city of St. Louis, and to have warrants drawn by him as auditor against the city of St. Louis, and to have their claims for salaries and office
22 expenses, audited by him as auditor of said city, is under and by virtue of the pretended act of the General Assembly of this State, set out by relators and entitled "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a board of election commissioners, to provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts or parts of acts in conflict or inconsistent herewith;" that said act purports to have been approved June 19th, 1899, and he avers that it is the same pretended act printed on pages 179 and following the session acts of the 40th General Assembly of this State, for 1899, under the title, "House bill No. 760, elections: in cities of 300,000 inhabitants or more."

He denies that relators are entitled to have the claims set out by them, or any of them, audited by him as auditor of the said city, or to have warrants drawn thereon. He avers that the above-cited pretended act is the sole authority under which relators can or do claim to hold the office of members of the board of election commissioners of the city of St. Louis, and he avers that said pretended act is null and void, and unconstitutional, and is not, and never was, enacted, and is not, and never became, a valid law of the State of Missouri.

And defendant avers that at the regular session of the aforesaid 40th General Assembly of the State of Missouri, a member of the house of representatives, to wit, James P. Nesbitt, on March 3, 1899, said house then being in session, introduced a bill entitled "An act

to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein." That said bill was numbered house bill No. 760. It will hereafter, for brevity, be referred to as "house bill No. 760," or "the Nesbitt bill."

That among other provisions contained in said Nesbitt bill, as originally introduced, it was provided that the governor, by and with the advice and consent of the senate, should appoint for each city now having or which may hereafter have 300,000 inhabitants or more, one election commissioner and no more, who should hold his office for the term of four years, and until his successor was commissioned and qualified. That said commissioner should make all necessary rules and regulations not inconsistent with the act, with reference to the registration of voters, and conduct of elections, and should have sole charge of and make provision for all elections, general and special, local, municipal, State and county, and of all others of every description, to be held in such city or any part thereof at any time. He was authorized to divide the city into election precincts, and was directed and empowered to select and choose three (3) electors as judges, and two (2) clerks of election for each precinct, one of said judges and one of said clerks of election to belong and to be a member of the party of opposite politics to said election commissioner; said judges and clerks also to act as registration and canvassing officers in their respective precincts.

23 It was further provided that two justices of the peace of such city, of opposite politics, to be designated and selected by the election commissioner, and said election commissioner, should constitute a board of appeals to hear applications and appeals to be placed on the registry of voters of persons who had applied for registration and been rejected by the precinct registers, and who may also register qualified persons applying therefor. Said board of appeals was also constituted the board of canvassers to open and canvass the returns of elections. No clause or section of said bill purported to repeal any other laws or acts save as such acts should be in conflict with the provisions of said bill.

A copy of said Nesbitt bill, being house bill No. 760 aforesaid, as originally introduced, was printed under authority of the said house of representatives, and is herewith filed, and marked Exhibit "A," and prayed to be considered, examined and referred to as a part of this return as fully as if set out at length herein.

Defendant states that said bill No. 760 was read in the house of representatives the first time on March 7th, and referred to the committee on elections, March 7th, 1899, reported from said committee with recommendation that it do pass with accompanying amendments, March 24th, 1899, but that the "accompanying amendments" proposed by the said committee were never agreed to nor acted upon when said bill No. 760 was taken up for engrossment on

April 15, 1899. That on said last-named date, a motion was offered by a member of the house, as follows: "Amend house bill No. 760 by striking out all of said bill after the enacting clause and inserting the following in lieu thereof." That the so-called amendment then offered was in fact a substitute for the whole of the Nesbitt bill, leaving only the title and the enacting clause of the original Nesbitt bill, and was an entire change of the original purpose and object of said Nesbitt bill. That among other provisions of the proposed amendment, the governor was authorized, within thirty days after the act becomes a law, by and with the advice and consent of the senate, to appoint for each of said cities to which the law was to apply, a board of election commissioners to be composed of three (3) members, who should hold their office for the term of four years, and until their successors were commissioned and qualified; one of said commissioners to be a member of and belong to the leading party politically opposed to that to which the governor belongs. Said board to have charge of registrations and elections in cities to which the act was to apply, to divide the city into voting precincts, to appoint the judges and clerks of election in the precincts, who should also be registers and canvassers in the voting precincts; act as a board of appeal and registration, and canvass the election returns. The last section of said proposed amendment also provided that "all acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled 'An act to create a board of election commissioners, etc.,' approved May 31, 1895, is hereby repealed."

In brief, the proposed amendment was an entire change of the original bill, in all of its main features and objects, a particularization of which here would unduly lengthen this return: reference is therefore made to the same, as printed in the journal of the said house of representatives at pages 1042 to 1059, both inclusive, and that part of said journal, namely pages 1042 to 1059 is prayed to be taken as a part hereof as fully as if set out at length, and an examination of said proposed amendment and comparison of the same with the original bill, will show that it was, in fact, not only a substitute for the original bill, and not a mere amendment
24 thereof, but was in fact and in effect a new bill under the title and with the enacting clause of the Nesbit- bill, and was an entire change in the original purpose of the original Nesbitt bill. Said proposed amendment as now found printed in the journal of the house as aforesaid, was not, however, in fact printed until after the adjournment of that session of the General Assembly, to wit, until after May 22, 1899, and was never printed during the session of the Fortieth General Assembly.

On April the 15th, the said so-called amendment to said bill was adopted by the house, and said house bill No. 760 was then ordered engrossed and printed by the house; but in fact was neither printed nor engrossed, as required by section 29 of article 4 of the constitution of this State.

Defendant states that afterwards, on April 20, 1899, the said house adopted said proposed amendment, and purported to pass said bill,

but as amended as aforesaid, and under the original title as aforesaid, and that afterwards, and on the same day, purported to amend the title thereto by striking out the words "to create the office of election commissioner," where the same occurs therein, and insert in lieu thereof the words "to provide for the creation of a board of election commissioners," and by striking out the word "his" where it occurs, and inserting in lieu thereof the word "its," and by adding at the end of the title the words "and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Defendant further avers that it is ordained by article IV of the constitution of this State, among other things, as follows:

SECTION 25. No law shall be passed, except by bill, and no bill shall be so amended, in its passage through either house, as to change its original purpose.

SECTION 26. Bills may originate in either house, and may be amended or rejected by the other; and every bill shall be read on three different days in each house.

SECTION 27. No bill shall be considered for final passage unless the same has been reported upon by a committee, and printed for the use of the members.

SECTION 28. No bill (except * * * ) shall contain more than one subject, which shall be clearly expressed in its title.

SECTION 29. All amendments adopted by either house to a bill pending or originating in the same, shall be incorporated with the bill by engrossment, and the bill thus engrossed, shall be printed for the use of the members before its final passage. The engrossing and printing shall be under the supervision of a committee, whose report to the house shall set forth, in writing, that they find the bill truly engrossed, and that the printed copy furnished to the members is correct.

SECTION 31. No bill shall become a law, unless on its final passage the vote be taken by yeas and nays, and the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor.

SECTION 32. No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof, etc.

* * *

25 SECTION 37. No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session; and before such officer shall affix his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that, if no objections be made, he will sign the same, to the end that it may become a law. The bill shall then be read at length, and if no objections be made, he shall, in the presence of the house, in open session, and before any other business is entertained, affix his signature, which fact shall be noted on the journal, and the bill immediately sent to the other house. When it reaches the other house, the presiding officer

thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed, in every respect as in the house in which it was first signed. * * *

Defendant avers that in the purported passage of the said house bill No. 760 through and by the house, each and all of the foregoing provisions of the constitution of this State were not only not complied with, but were violated in the following, among other particulars, to wit:

1. Said purported bill was amended in its alleged passage through the house of representatives so as to change its original purpose.

2. It was not read on three different days in each house.

3. It was considered for final passage in the house without having been reported upon by a committee, and without having been printed for the use of the members of the house.

4. It contained more than one subject, and the subject was not clearly expressed in its title.

5. The amendments adopted by the house of representatives and originating in said house, were not incorporated in the bill by engrossment, and the bill as engrossed by the house was not printed for the use of the members of the house before the final passage thereof; nor did any committee of said house set forth by report in writing that they found the bill truly engrossed, and that the printed copy furnished to the members was correct, but on the contrary, the committee on engrossed bills in the house to which was referred said bill, reported, as shown by the printed official journal of said house under date of April 20, 1899, and at page 1102, that said bill had not been truly engrossed, and that the printed copies thereof furnished to the members were not correct. Defendant further alleges that this was the only reference of this bill to any committee by the house for the purpose of engrossment and printing, and that the aforesaid report was the only report made by any committee to said house on this bill.

6. That when said pretended bill, as amended by the house, was placed upon its final passage in the house, no vote was taken by yeas and nays, nor were the names of the members voting for and against said pretended bill as it purported to have been amended entered upon the house journal, nor was it recorded thereon that a majority of the members elected to the house voted in favor thereof.

7. That the only printed copy of what purported to be said bill No. 760, as amended by the house, placed in the hands of the members of the house or of the senate for their use was that herewith filed and marked Exhibit "B," which is prayed to be taken as a part of this return as fully as if set out at length and in full.

8. That said bill was not reported upon by a committee, and was not printed for the use of the members of the house of representatives before it was considered for final passage by the said
26 house, as required by section 27 of article IV, of the constitution of this State; nor was the title of said bill, as amended by the said house of representatives, ever printed at all for the use

of the members of said house or for the use of the members of the senate and said General Assembly.

And defendant further avers that in the purported passage of house bill No. 760 through and by the house, each and every of the foregoing cited provisions of the constitution of this State were not only not complied with, but were violated.

And defendant further avers that after it was pretended and assumed that said bill had passed the house of representatives, there was transmitted to the senate, by the house, for its action and received by the senate on April 21, 1899, an alleged bill which purported to be, but was not, the bill pretended to have been passed by the house under the number and designation of house bill No. 760, and what purported to be printed copies of said house bill No. 760, as purported to have been passed by the house, were transmitted to the senate for the use of the members of the senate, being the same as Exhibit "B" before referred to, and none other, that being the only and sole document purporting to be a printed copy of said house bill No. 760 ever furnished or printed for the use of the members of the senate by any committee or officer or other person or authority prior to the alleged passage of said bill. Defendant avers that said printed document is not a true copy of the bill, as alleged to have been amended and passed by the house of representatives, and does not contain the title of the bill as amended and adopted by the house, but contains, word for word, the title of the bill as originally introduced by Mr. Nesbitt, as hereinbefore set out, and was misleading, incorrect and illegal, and not the bill No. 760, which was pretended to have been passed by the house.

Defendant further states that the bill which was received on said 21st day of April, 1899, by the senate from the house, and which purported to be the bill which had passed the house, and which was designated as house bill No. 760, reported to the senate under this title and no other, namely: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

That, as appears by the entry in said journal, the officer of the house who delivered the said bill to the senate and who stated that the house asked the concurrence of the senate thereto, added, after reciting the title of the bill as aforesaid, the words, "title amended," but the defendant avers that no amendment to the title was on the bill as presented to the senate, no amendment to the title was engrossed with or on the said bill, but the engrossed copy thereof presented to the senate from the house, for the action and concurrence of the senate was the original title as last aforesaid, and not otherwise; nor did the messenger of the house show to the senate, nor did the house ever inform the senate, how or in what respect or particular the title was amended, but at all times when said bill was before the

senate for its action, as shown by its journal, and in fact, it was under the original title as aforesaid, and not otherwise.

27 That the next entry relating to said bill upon the journal of the senate is as follows, under date of April 24, 1899: "House bill No. 760 entitled, 'An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties, to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,' was taken up and read the first time."

That the next entry relating to said bill is of date April 25, 1899, and appears upon the journal of the senate of that date as follows, namely: "House bill No. 760 entitled, 'An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,' was taken up, read second time and referred to committee on privileges and elections."

That the next entry relating to said bill is of date May 20, 1899, when the following entries appear upon the journal of the senate, of its proceedings of that date, namely: "Senator Haynes, from the committee on privileges and elections, submitted the following reports, which were read: (among others) 'Mr. President—Your committee on privileges and elections, to which was referred house bill No. 760, entitled, "An act to provide for the registration of voters, etc., in cities now having, or which hereafter may have, 300,000 inhabitants or more," begs leave to report that it has examined the same and recommends, by a majority vote, that it do not pass, and a majority of the committee are of the opinion, as heretofore reported, that the same cannot be considered because of the Morton resolution.'

"Respectfully submitted.

"W. H. HAYNES, *Chairman.*"

"On motion of Senator Morton, house bill No. 760, entitled, 'An act to provide for the registration of voters in cities now having or which may hereafter have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,' was taken up for third reading." * * *

(Here follows votes on points of order.)

"Senator Morton moved that the rules be suspended and house bill No. 760 be read third time and put upon its passage. * * * The question recurring upon the suspension of the rules, roll was called and the motion prevailed by the following vote."

(Here follows names of senators voting and those absent.)

"The question recurring upon the motion of Senator Morton, that house bill No. 760 be read third time and placed on its passage." (Here follows dilatory motion.) "The question recurring upon the motion to place house bill No. 760 on third reading and
28 passage. The motion prevailed. The roll was called and house bill No. 760 was passed by the following vote." (Here follows names of senators voting for and against and of absent senators.) "The president declared the bill passed. The title of the bill as amended was read and agreed to. Senator Farris moved to reconsider the vote by which the bill passed. Senator Fields moved to lay that motion on the table. The latter motion prevailed."

That the next entry relating to said bill is of date Monday, May 22, when the following entries are upon the journal of the senate, relating to said bill No. 760:

"The president announced the reception from the house of representatives enrolled house bill No. 760, 'An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, to provide for his appointment and define his duties, to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein.' That the same had passed both branches of the General Assembly; that all other business would be suspended and the bill read at length; that unless objection be made, he would sign the same to the end that it become a law, and directed the secretary to read the bill. The bill was read at length by the secretary." (Here follows protests.) "Whereupon the presiding officer, in the presence of the senate in open session and no other business intervening, affixed his signature thereto, and the bill was immediately returned to the house."

And this defendant avers that the above are the only material entries upon the journal of the senate relating to said bill, and he files herewith a certified copy from the secretary of state of all the entries relating to said bill as appear on the journal of the senate, which certificate is marked Exhibit "C" and prayed to be taken as a part of this return, as fully as if set out at length, and defendant avers that the above senate entries are a true, complete and correct record of all that took place in the senate in relation to said bill.

And this defendant avers that on each and every occasion, and at every time when said house bill No. 760 was read in the senate it was read under the title last aforesaid, and the title last aforesaid was the only title read in connection therewith in the senate, and at no time was any house bill read in or passed by the senate of the fortieth General Assembly of the State of Missouri, or signed by its presiding officer, under the title, "House bill No. 760, an act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe

rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent therewith."

Wherefore, this defendant says that the purported act, under the title set out by the relators in their petition, and under the title set out in the printed copy of the session acts of the fortieth General Assembly as aforesaid, never, in fact, was before the senate for its consideration, did not receive its concurrence, was not signed by its presiding officer, and was not enacted into a law of this State.

And defendant avers that there was read in the senate as house bill 760, on three different days, an entirely different bill from that pretended to have been passed by the house, to wit, a bill
29 under the following title: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," and none other, which said bill was not house bill No. 760, as pretended to have been passed by the house, nor was said bill so pretended to have been passed by the house ever before the senate, nor was the bill as purported to be passed by the house ever printed as required by the constitution for the use of the members of the senate before its passage by said senate.

And defendant avers that said bill, after its purported passage by the senate, was signed by the president of the senate, that the bill as signed by the president of the senate, was the bill as purported to be passed by the senate, and not as purported to have been passed by the house, and the bill purported to be passed by the house and signed by the speaker thereof, was not the bill signed by the president of the senate.

And defendant still further avers that in the purported passage through the senate of the pretended bill heretofore referred to, the foregoing-cited provisions of the constitution were violated in the following, among other particulars, to wit:

1. Said purported bill was not read on three different days in the senate.

2. That the same had not been printed for the use of the members of the senate before being considered for final passage.

3. That the same contained more than one subject, and that said subject was not clearly expressed in the title.

4. That the amendments adopted by the senate to the same were not incorporated therein by engrossment, nor was said pretended bill engrossed, nor was it printed for the use of the members of the senate before its final passage by the senate, nor did any committee report to the senate in writing that they found said pretended bill truly engrossed or that any printed copy thereof furnished to the members was correct.

5. That on the final passage of said pretended bill as purporting to have been amended by the senate, the vote thereon was not taken

by yeas and nays, nor were the names of members voting for or against said pretended bill entered upon the senate journal, nor was it reported upon said journal that a majority of the members elected to the senate voted in favor of said pretended bill as it purported to have been amended.

6. The purported amendment to the title purported to have been been made by the house was not reported to or before the senate, and the purported amendment to the title by the senate was not reported back to the house nor concurred in by it, and the bill signed by the presiding officer of the senate was under the original title and not under a title as amended by either the house or the senate.

And defendant avers that the foregoing-cited constitutional provisions were not only not complied with, but were violated in every other respect in the alleged passage of said bill through the senate.

30 Defendant further avers that the chief clerk of the house of representatives did not present the pretended bill purporting to have been passed by the house in person to the governor on the same day on which it was signed, and enter the fact upon the journal of the house, as required by section 38 of said article IV of the constitution.

Wherefore defendant avers that by reason of non-compliance with and violation of the hereinbefore-cited provisions of the constitution of this State, said pretended house bill No. 760 was never lawfully passed, and is of no force, effect or validity as a law.

Notwithstanding said facts and the illegality of all the steps and proceedings attending its pretended passage through the house of representatives and senate as aforesaid, defendant is informed and believes and states on information and belief that said pretended house bill No. 760 purports to be enrolled and what purports to be a true copy of the enrolled bill and purporting to have been approved by the governor June 19, 1899, is printed and published and issued by the secretary of state as an act of the General Assembly of this State, under the following title, to wit:

"H. B. 760. Elections: In cities of 300,000 inhabitants or more. An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment, and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Defendant avers that no bill, law or act under the title last aforesaid or with the provisions in said pretended act contained, or of the tenor and effect of said pretended act, ever passed either or both houses of the General Assembly of this State or was ever enacted into law.

Defendant further avers that by sections 53 and 54 of said article VI of the constitution of this State, it is ordained as follows:

"SECTION 53. The General Assembly shall not pass any local or special law: * * *

Regulating the affairs of counties, cities, townships, wards or school districts;

For the opening and conducting of elections, or fixing or changing the places of voting;

Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts;

In all other cases where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject. * * *

SECTION 54. No local or special law shall be passed unless notice of the intention to apply therefor shall have been published (etc. * * *) and the notice shall be recited in the act according to its tenor."

And by sections 2, 5, 8, 10 and 12 of article VIII of the same constitution, it is ordained as follows:

SECTION 2. Every male citizen of the United States, and every male person of foreign birth, who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to
31 vote, who is over the age of 21 years, possessing the following qualifications, shall be entitled to vote at all elections by the people:

First. He shall have resided in the State one year immediately preceding the election at which he offers to vote.

Second. He shall have resided in the county, city or town where he shall offer to vote, at least 60 days immediately preceding the election.

SECTION 5. The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise.

SECTION 8. No person while kept at any poor-house, or asylum at public expense, nor while confined in any public prison shall be entitled to vote at any election under the laws of this State.

SECTION 10. The General Assembly may enact excluding from the right of voting, all persons convicted of felony or other infamous crime, or misdemeanors connected with the exercise of the right of suffrage.

SECTION 12. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding his election or appointment.

Section 7 of article IX is as follows: "The General Assembly shall provide, by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by gen-

eral laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions."

And by sections 1, 10 and 12 of article X of said constitution it is ordained:

SECTION 1. The taxing power may be exercised by the General Assembly for State purposes, and counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

SECTION 10. The General Assembly shall not impose taxes upon counties, cities, towns, or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes; but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SECTION 12. No county, city * * * or other political corporation or subdivision of the State, shall be allowed to become indebted in any manner or for any purpose to the amount exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose."

And by section one (1) of the fourteenth amendment to the Constitution of the United States, it is ordained that no State "shall deny to any person within its jurisdiction the equal protection of the laws."

Defendant alleges that said pretended house bill No. 760 aforesaid and said pretended act last above referred to violate and are in conflict with each of the above recited and quoted constitutional provisions, both of the constitution of this State and of the United States, and are null and void.

32 That said pretended act, contrary to the above-cited constitutional provisions is special legislation—is a denial of the right of self-government—is an attempt to divert and unlawfully apply public revenues, and subjects them to the demands of unauthorized persons, and diverts the revenues derived from taxation to purposes and at the will of persons other than those for which they were assessed, levied, paid and collected, and deprives the citizens of the United States residing in the city of St. Louis of their right to the equal protection of the laws, and imposes on citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office and is null and void.

Defendant further states that section 5 of article VIII, of the constitution of this State is as follows: "The General Assembly shall provide by law for the registration of all voters in cities and counties haveing a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise."

That said pretended act of June 19, 1899, hereinbefore set forth, violates said provision of the said constitution in that it ignores the classification made by the said provision for the registration of voters in this State, and provides that "in all cities in this States now having or which hereinafter may have 300,000 inhabitants or more,

there shall be a registration of all the qualified voters, and said registration and mode of conducting the election held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent herewith," and by section 49 attempts to repeal the act entitled, "An act to create a board of election commissioners, etc.," approved May 31, 1895.

That said pretended act not only violates and ignores the constitutional classification of cities and counties for registration purposes, but attempts to establish a different classification by providing under the guise of an attempted general law, a special and different system of registration and conducting elections in the city of St. Louis, from that provided by the constitution of the State, and different from that controlling other cities and counties in this State having a population of over 100,000 inhabitants.

That said pretended act is a special act applicable only to the city of St. Louis, and not a general law, and was not passed in accordance with the provisions of the constitution of this State as to special legislation, to wit: section 54, article IV, and is in violation of the other provisions of the constitution prohibiting special legislation and classification of cities herein set forth, and is unconstitutional and void.

Defendant further avers that under and by virtue of the 5th section of the 8th article of the constitution of this State, hereinbefore cited and quoted, the General Assembly of this State enacted a law entitled, "An act to create a board of election commissioners in cities now having or which hereafter may have over 100,000 inhabitants; to provide for the appointment of the same; to define the duties of such board; to provide for the registration of all voters in such cities; to govern elections therein, defining offenses and providing for punishment thereof; prescribing penalties for violating
33 the provisions of this act; and abolishing the office of recorder and deputy recorder of voters." That said act was duly approved by the governor of this State May 31, 1895, and took effect and was of force August 25, 1895, and will be found in the Session Acts of this State for extra session, 1895, at pages 5 to 43, inclusive.

That among other provisions of said act, it was enacted in the second section thereof, that a board of election commissioners be and is created for each city that is governed by the provisions of said act, composed of three members, who should be appointed as follows: Two of said commissioners to be appointed by the governor, one of them to be by him designated as the chairman of the board, and who shall hold his office for the term of four years, or until his successor is appointed and qualified, the other or second commissioner for the term of two years, and until his successor is appointed and qualified; the third commissioner to be appointed by the mayor of the city, the person so appointed to be a member of the leading political party opposed to that to which the chairman appointed by the governor belongs, who shall be secretary of said board, and shall hold his office for the term of four years, and until his successor is appointed by the mayor and has qualified.

That the city of St. Louis, being one of the cities of this State to which said law applies, a board of election commissioners was duly appointed under said law some time before 1899 and before the enactment of the laws hereinafter referred to as the "Cardwell act."

That the terms for which said commissioners were respectively appointed have not yet expired, nor have any successor, or successors, been appointed or qualified for or to either of them, but the defendant is advised that a majority of them have abandoned their claim to said office under said law and their appointment by virtue of it.

Defendant further states that the law above referred to is the only law of this State providing for the registration of all voters in cities and counties of this State having a population of more than one hundred thousand inhabitants; that said law is now, and since its taking effect has been, in full force and effect, and applies to said city of St. Louis, and is unrepealed and that the same has been amended by the General Assembly of the State of Missouri only in immaterial respects, until an attempted amendment by the act referred to as the Cardwell act in 1899.

That at the 40th session of the General Assembly of this State said act of May 31, 1895, was further attempted to be amended by an act entitled, "An act to amend an act entitled, 'An act to create a board of election commissioners in cities now having, or which hereafter may have, over 100,000 inhabitants; to provide for the appointment of the same; to define the duties of such board; to provide for the registration of all voters in such cities; to govern elections therein, defining offenses and providing for punishment thereof; prescribing penalties for violating the provisions of this act; and abolishing the office of recorder and deputy recorder of voters;' approved May 31, 1895, as amended by the session acts, approved March 8, 1897, and March 23, 1897, and March 26, 1897;" which act was approved June 19, 1899, Session Acts of Missouri, 1899, pages 197 to 199, inclusive, the bill for which act was numbered house bill No. 785, was introduced by Representative
34 Cardwell, has been, and will hereafter be, referred to, for brevity, as "The Cardwell act."

Said amendment changes the manner of appointment of the members of the board and of employment of clerical assistants.

Said Cardwell act last above referred to was approved by the governor June 19, 1899, and, if a valid law, was of force and effect on August 21, 1899, the 40th General Assembly having adjourned *sine die* on May 22, 1899.

That other than as hereinabove set out, no amendments have been made to the aforesaid act of May 31, 1895.

Defendant further states that no appointments to the board of election commissioners have been made for the city of St. Louis under the aforesaid Cardwell act of June 19, 1899. But defendant avers that the act of May 31, 1895, and its amendments, is the only law relating to and governing registration and elections in said city of St. Louis, and the said city of St. Louis is, and will be, liable only for salaries and expenditures of commissioners who are appointed and have qualified thereunder.

And defendant avers that the so-called Nesbitt law purports to repeal the whole of the aforesaid act of May 31, 1895, sec. 49 of the Nesbitt law being as follows: "SEC. 49. All acts or parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled 'An act to create a board of election commissioners' etc., approved May 31, 1895, is hereby repealed."

Defendant avers that the so-called Nesbitt law and Cardwell act both purport to have passed the house and senate of the 40th General Assembly on the same day and at the same session and to have been approved on the same day, to wit, June 19, 1899, and that under the constitution of this State (there being no emergency clause to either of them) each, if valid, was of force and in effect on the same day, to wit, August 21, 1899; that the same are so inconsistent with each other that neither can take effect, and the act of May 31, 1895, and the amendments heretofore referred to as made to it prior to those undertaken to be made by the 40th General Assembly of this State, are the only laws now in force and effect in this State relative to appointment of election commissioners for cities of over 100,000 population, to which class of cities the city of St. Louis belongs.

For further return this defendant denies that any appropriation has been made for these relators, and he avers that no appropriation, available for the payment of any members of any board of election commissioners appointed under the Nesbitt bill, for the city of St. Louis, or for the payment of their office and clerical expenses, has ever been made by the municipal assembly of the city of St. Louis, and he avers that the only appropriation made is for the election commissioners appointed and provided for under the act of May 31, 1895, heretofore referred to, and the amendments made thereto prior to January 1, 1899, and for the payment of their office expenses and clerical assistants, and he denies that the re-
35 lators in this case are the successors in office of the members of the board of election commissioners of the city of St. Louis, who have been appointed under the act of May 31, 1895 and its amendments, and he denies that the appropriation made by the municipal assembly of the city of St. Louis for the payment of the salaries and office expenses and clerical assistants of the board of election commissioners of the city of St. Louis, so appointed as aforesaid under said act of 1895, is available, or subject to his warrant, as auditor of said city, for the payment of the salaries, office expenses or clerical assistants of relators claiming appointment under the pretended act and so-called Nesbitt act of June 19, 1899.

And having made full return, defendant asks to be hence discharged with his costs in this behalf expended.

ISAAC M. MASON,
*As Auditor of the City of St. Louis, Defendant.*

B. SCHNURMACHER,
*City Counsellor, for Defendant.*
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN, *Of Counsel.*

January 17th relators filed a general denial to the return as follows:

*Reply to Return.*

In the Supreme Court of Missouri, October Term, 1899, in Term Time, Court en Banc.

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| STATE OF MISSOURI *ex Rel.* JAMES McCaffery, L. D. Kingsland, and George J. Kobusch, Relators, *vs.* ISAAC M. MASON, Respondent. | Mandamus. Relator's Reply to Respondent's Return. |

Now at this day come the relators and deny each and every allegation in respondent's return, except as to the admissions and confessions of law and fact therein contained.

EDWARD C. CROW,
*Attorney General,*
SAM. B. JEFFRIES,
*Ass't Att'y Gen.,*
*For Relators.*

W. J. STONE, *Of Counsel.*

*Leave to Take Testimony.*

January 17th, 1900, ordered by Honorable James B. Gantt, chief justice in chambers, present, Hon. Samuel B. Jeffries, assistant attorney general, representing relators, and Morton Jourdan for respondent, that both relators and respondent take such testimony as desired before some notary public at such time and place as either party should desire.

36 *Evidence.*

In the Supreme Court of Missouri, en Banc, October Term, 1899.

STATE *ex Rel.* JAMES MCCAFFERY ET AL., Relators,
*vs.*
I. M. MASON, Auditor City of St. Louis, Respondent.

Depositions taken in the above-entitled cause before John A. Lee, notary public, at Jefferson City, Missouri, January 25, 1900, between the hours of 8 o'clock a. m. and 5 o'clock p. m., pursuant to agreement between the attorneys for the respective parties, each party waiving notice and service of notice of taking of said depositions.

Appearances: Edward C. Crow, attorney general; Sam. B. Jeffries, assistant attorney general; William J. Stone, for relators; George D. Reynolds, Morton Jourdan, for respondent.

*Testimony on Behalf of Relators.*

Mr. STONE: We offer certified copy of the act of the 40th General Assembly of the State of Missouri, entitled "An act to provide for

the registration of voters in cities now having, or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment, and define its duties; to govern elections in such cities, defining offenses, and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts in conflict or inconsistent herewith," the same being copy of the original roll of said act, containing also the signatures of the speaker of the house of representatives and chief clerk of the house of representatives; and the signatures of the president of the senate, and of the secretary of the senate in authentication thereof, and the certificate of Mathew Coffey, chairman of the committee on enrolled bills of the house of representatives of said General Assembly, to the effect that he had compared said bill with the engrossed copy of the original thereof, together with the house amendment to title, and found the same to be truly enrolled; also containing the signature of Lon V. Stephens, governor of the State of Missouri, approving the said bill; also a protest against the passage of house bill No. 760, signed by Charles Schweickardt, T. C. Martin, F. W. Mott, Charles F. Busche, and James M. Rollins, members of the senate of the 40th General Assembly, and sworn to before A. M. Hough, notary public; also the message of Lon V. Stephens, governor, approving said act; all of which is filed, and marked by the notary as Relators' Exhibit "1."

Mr. REYNOLDS: We object to so much of Relators' Exhibit "1" as contains what is called the protest, and the governor's certificate of approval as incompetent and irrelevant.

Mr. STONE: Relators offer in evidence ordinance No. 19835, passed by the municipal assembly of the city of St. Louis, and approved August 7, 1899, marked by the notary as Relators' Exhibit "2."

Relators close.

37 *Testimony for Respondent.*

Mr. REYNOLDS: Defendant offers paper heretofore filed with his return in this cause, and marked Defendant's Exhibit "A," being house bill No. 760, as originally introduced in the house of representatives of the 40th General Assembly, by Representative Nesbitt, and which was read first time and three hundred copies ordered printed March 3rd, 1899, which is initialed by the notary as Defendant's Exhibit "A."

Mr. STONE: To the introduction of the foregoing Exhibit "A," offered by respondent, the relators object on the ground that the same is irrelevant and immaterial.

Mr. JEFFRIES: And it is objected for the further reason that the roll of the act, as signed by the presiding officers of the two houses of the General Assembly, in open session, and approved by the governor, is conclusive that the act was legally passed, and it is beyond the jurisdiction of the court to make inquiry into the form of procedure had by the General Assembly in passing an act; and for the reason that the court has no authority to interfere or pass

upon the constitutionality of the actions of one of the co ordinate branches of the State government as recognized by the constitution, as to the manner in which constitutional provisions affecting the proceedings of legislation shall be carried out. The introduction of this exhibit is further objected to for the reason that the constitution expressly provides that each house of the General Assembly shall finally, and before the bill is signed, make inquiry in a quasi-judicial way, or otherwise, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly have been complied with; and for the reason that the action of the legislature as evidenced and authenticated by the original roll of the bill, as signed by the presiding officers of both houses, and approved by the governor, is conclusive as to what actions were taken thereon.

Mr. REYNOLDS: Next we offer in evidence Defendant's Exhibit "B," heretofore filed as said Exhibit "B," with the return of respondent in this cause, being engrossed copy of house bill No. 760, as printed by order and authority of the house of representatives, April 15th, 1899, and marked by the notary as Defendant's Exhibit "B."

Mr. JEFFRIES: To the introduction of the foregoing Exhibit "B," offered by respondent, the relators object on the ground that the same is irrelevant and immaterial. And it is objected to for the further reason that the roll of the act as signed by the presiding officers of the two houses of the General Assembly, in open session, and approved by the governor, is conclusive that the act was legally passed, and it is beyond the jurisdiction of the court to make inquiry into the form of procedure had by the General Assembly in passing an act; and for the reason that the court has no authority to interfere or pass upon the constitutionality of the actions of one of the co-ordinate branches of the State government as recognized by the constitution, as to the manner in which constitutional provisions affecting the proceedings of legislation shall be carried out. The introduction of this exhibit is further objected to for the reason that the constitution expressly provides that each house of the General Assembly shall finally, and before the bill is signed, make inquiry in a quasi-judicial way, or otherwise, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly have been complied with; and for the reason that the
38 action of the legislature, as evidenced and authenticated by the original roll of the bill, as signed by the presiding officers of both houses, and approved by the governor, is conclusive as to what actions were taken thereon.

Mr. REYNOLDS: Defendant offers and introduced in evidence Exhibit "E," and so marked by the notary, being house bill No. 760, printed and published by order of the senate, of date May 22, 1899.

Mr. JEFFRIES: To the introduction of the foregoing Exhibit "E," offered by respondent, the relators object on the ground that the

same is irrelevant and immaterial. And it is objected to for the further reason that the roll of the act as signed by the presiding officers of the two houses of the General Assembly, in open session, and approved by the governor, is conclusive that the act was legally passed, and it is beyond the jurisdiction of the court to make inquiry into the form of procedure had by the General Assembly in passing an act; and for the reason that the court has no authority to interfere or pass upon the constitutionality of the actions of one of the co-ordinate branches of the State government as recognized by the constitution, as to the manner in which constitutional provisions affecting the proceedings of legislation shall be carried out. The introduction of this exhibit is further objected to for the reason that the constitution expressly provides that each house of the General Assembly shall finally, and before the bill is signed, make inquiry in a quasi-judicial way, or otherwise, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly have been complied with; and for the reason that the action of the legislature as evidenced and authenticated by the original roll of the bill, as signed by the presiding officers of both houses, and approved by the governor, is conclusive as to what actions were taken thereon.

Mr. REYNOLDS: Defendant offers and introduces in evidence certified copy of act approved June 19th, 1899, as certified to by the secretary of state, under date of June 20th, 1899, marked by the notary as Defendant's Exhibit "F."

Mr. JEFFRIES: To the introduction of the foregoing Exhibit "F," offered by respondent, the relators object on the ground that it is immaterial, insufficient and incomplete.

Mr. REYNOLDS: Defendant offers and introduces in evidence paper marked Defendant's Exhibit "D," and identified by the notary as Defendant's Exhibit "D."

It is stipulated by counsel for relators and defendant, that Defendant's Exhibit "D," just offered and introduced, contains all the entries of the journal of the house of representatives of the 40th General Assembly of this State which relate to house bill No. 760, also designated as the Nesbit bill, and the printed pages, being pages 1673 to 1685 both inclusive, contained in said Exhibit "D," contain all that appears in said journal of date May 22, 1899, and that said Exhibit "D" may be used in evidence as if duly certified by the secretary of state, the same consisting of pages from said journal as officially printed and published. This stipulation is made subject to whatever objection may be made thereto by relators.

Mr. JEFFRIES: To the introduction of Respondent's Exhibit "D," the relators object for the reason that it is irrelevant and immaterial. And it is objected to for the further reason that the roll of the act as signed by the presiding officers of the two houses of the General Assembly, in open session, and approved by the governor, is conclusive that the act was legally passed, and it is beyond the jurisdiction of the court to make inquiry into the form of procedure

had by the General Assembly in passing an act; and for the reason that the court has no authority to interfere or pass upon the
39 constitutionality of the actions of one of the co-ordinate branches of the State government as recognized by the constitution, as to the manner in which constitutional provisions affecting the proceedings of legislation shall be carried out. The introduction of this exhibit is further objected to for the reason that the constitution expressly provides that each house of the General Assembly shall finally, and before the bill is signed, make inquiry in a quasi-judicial way, or otherwise, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly have been complied with; and for the reason that the action of the legislature as evidenced and authenticated by the original roll of the bill, as signed by the presiding officers of both houses and approved by the governor, is conclusive as to what actions were taken thereon; and for the further reason that the court has no authority to examine the journals of the two houses of the legislative department for the purpose of determining whether or not the constitutional provisions were complied with in the passage of an act.

Mr. REYNOLDS: Defendant offers and introduces in evidence paper marked Defendant's Exhibit "C," being the same heretofore filed with the defendant's return in this cause on January 8th, 1900, and so designated, and now marked by the notary, being a certified copy from the secretary of state of the journal of the senate of the 40th General Assembly of the State of Missouri, so far as it relates to house bill No. 760.

Mr. JEFFRIES: To the introduction of Respondent's Exhibit "C," the relators object for the reason that it is irrelevant and immaterial. And it is objected to for the further reason that the roll of the act as signed by the presiding officers of the two houses of the General Assembly, in open session, and approved by the governor, is conclusive that the act was legally passed, and it is beyond the jurisdiction of the court to make inquiry into the form of procedure had by the General Assembly in passing an act; and for the reason that the court has no authority to interfere or pass upon the constitutionality of the actions of one of the co-ordinate branches of the State government as recognized by the constitution, as to the manner in which constitutional provisions affecting the proceedings of legislation shall be carried out. The introduction of this exhibit is further objected to for the reason that the constitution expressly provides that each house of the General Assembly shall finally, and before the bill is signed, make inquiry in a quasi-judicial way or otherwise, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly have been complied with; and for the reason that the action of the legislature as evidenced and authenticated by the original roll of the bill, as signed by the presiding officers of both houses and approved by the governor, is conclusive as to what actions were taken thereon; and for the further

reason that the court has no authority to examine the journals of the two houses of the legislative department for the purpose of determining whether or not the constitutional provisions were complied with in the passage of an act.

Defendant here rests.

Relators now move to strike out all of the evidence and exhibits introduced by respondent for the reason that they are irrelevant and immaterial. They are objected to, also, for the further reason that the roll of the act as signed by the presiding officers of the two houses of the General Assembly, in open session, and approved by the governor, is conclusive that the act was legally passed, and it is beyond the jurisdiction of the court to make inquiry into the form of procedure had by the General Assembly in passing an act; and for the reason that the court has no authority to interfere or pass upon the constitutionality of the actions of one of the co-ordinate branches of the State government, as recognized by the constitution, as to the manner in which constitutional provisions affecting the proceedings of legislation shall be carried out. The introduction of this evidence and these exhibits is further objected to for the reason that the constitution expressly provides that each house of the General Assembly shall finally, and before the bill is signed, make inquiry in a quasi-judicial way or otherwise, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly have been complied with; and for the reason that the action of the legislature, as evidenced and authenticated by the original roll of the bill, as signed by the presiding officers of both houses and approved by the governor, is conclusive as to what actions were taken thereon; and for the further reason that the court has no authority to examine the journals of the two houses of the legislative department for the purpose of determining whether or not the constitutional provisions were complied with in the passage of an act.

It is admitted that Cornelius Roach was secretary of the senate and Henry A. Newman chief clerk of the house of representatives of the 40th General Assembly; also, it is admitted, that W. J. Ward was speaker of the house of representatives, and A. H. Bolte was lieutenant governor, and *ex officio* president of the senate of the 40th General Assembly.

This was all the evidence offered by either party in the cause.

STATE OF MISSOURI, }
*County of Cole,* } *ss:*

I, John A. Lee, a notary public, within and for the county of Cole, in the State of Missouri, do certify that, in pursuance of the agreement between the relators, James McCaffery, *et al.*, and Isaac M. Mason, respondent, they came before me at the supreme court building, in the county and State aforesaid. That then and there, evidence touching certain documents and papers was presented and

reduced to writing in my presence, on the day, between the hours, and at the place in that behalf first aforesaid, and that said depositions are now herewith returned.

Given at Jefferson City, in the county of Cole and State of Missouri, on this 25th day of January, A. D. 1900.

——— ———,
*Notary Public.*

My commission expires March 3rd, 1902.

RELATORS' EXHIBIT "1."

STATE OF MISSOURI, *ss:*

I, Alexander A. Lesueur, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of an act of the General Assembly of the State of Missouri, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Also copy of the protest against the signing of the said act, and also copy of the governor's message approving said act, as appears by comparing the same with the original roll of said act now on file as the law directs in this office.

41 In testimony whereof, I hereunto set my hand and affix the great seal of the State of Missouri. Done at my office in the city of Jefferson, this twenty-fifth day of January, A. D. 1900.

[SEAL.] A. A. LESUEUR,
*Secretary of State.*

(H. B. 760.)

*Elections: In Cities of* 300,000 *Inhabitants or More.*

An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith.

SECTION 1. In all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more, there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject

to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith.

SEC. 2. Within thirty days after this act becomes a law, the governor, by and with the advice and consent of the senate, shall appoint for each of such cities a board of election commissioners, to be composed of three (3) members, who shall hold their office for the term of four years, and until their successors are commissioned and qualified. One of said commissioners shall be a member of and belong to the leading party politically opposed to that to which the governor belongs. In making the appointment of commissioners, the governor shall designate the commissioner who shall be chairman of the board of election commissioners of such city. In case of vacancy for any cause in said board, the same shall be filled by the governor for the unexpired term until the assembling of the next legislature, when the name of said commissioner shall be submitted to the senate by the governor for confirmation, as those of the other commissioners when appointed. Such commissioners shall be legal voters, residents of the State for at least five years and of such city for a like term and be of approved integrity and capacity; they shall hold no other office, and shall be ineligible to any elective or appointive office during their term of office, and shall, before entering upon the duties of their said office, take and subscribe an oath to support the Constitution of the United States and of this State, and to demean themselves faithfully in office, and each to give bond to the State in the sum of ten thousand dollars with securities to be approved by the governor, conditioned for the faithful and honest performance of the duties of his said office, and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the secretary of state. Said election commissioners shall make all necessary rules and regulations, not inconsistent with this act, with reference to the registration of voters and conduct of elections; and shall have charge and make provisions for all elections, general, special, local, municipal, State and county and of all others of every description, to be held in such city or in any part thereof, at any time.

SEC. 3. Such election commissioners shall appoint and commission one deputy election commissioner who shall hold his office during the pleasure of said commissioners, and shall be vested with all the powers and duties of the commissioners during their absence, sickness or inability to perform their duties; said deputy election commissioner shall also be the secretary of the board of election
42 commissioners. Such commissioner shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said deputy election commissioner and employés shall be subject to the same restrictions and take and subscribe like oaths as said commissioners, and file the same in the office of the commissioners. Said election commissioners, deputy election commissioner, and judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their

several offices, and in the affairs and business thereof. Said board of election commissioners shall perform all the duties and take the place of the present board of election commissioners of such cities immediately after this act becomes a law. The offices and boards of election commissioners as now constituted and existing in such cities to which this act applies are hereby abolished, and the commissions of such election commissioners hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to the cities named herein, are hereby repealed.

SEC. 4. The office of such board of election commissioners shall be in the city hall of such city, and shall be kept open for the transaction of the duties and business of said office during business hours. Immediately after the appointment of said commissioners, and upon the opening of such office, the officers or other custodians of said property shall, upon demand by said commissioners, turn over to them all books of registration, poll books, tally-sheets, ballot-boxes, form blanks, stationery, and property of every description in their hands in any way relating to registration and elections, or connected therewith in any manner. Said election commissioners shall purchase and provide all necessary ballot-boxes, and all books of registration, poll books, tally-sheets, ballots, blanks, and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith, and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted, and cleaned, and such place or places shall be located in the most public, orderly, and convenient portion thereof.

SEC. 5. Said election commissioners and deputy election commissioner shall have the power and are hereby authorized to register any person or persons in said office of election commissioners, and re-register or transfer any person or persons who may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except such days as intervene between the completion of the registration herein provided and the next following election; a change of residence from one place in a precinct to another place or part thereof shall not necessitate a re-registration or transfer, or deprive the registered voter of his right to vote in said precinct. Such registration of voters shall be done in the same form and manner and in the same book as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration in such precincts.

SEC. 6. It is hereby made the duty of such board of election commissioners for such cities within six months after taking
43 effect of this act, to divide such cities into election precincts regarding ward lines and composed of compact and contiguous territory, which shall contain as nearly as practicable, four hundred actual voters; and in making such division and establish-

ing such precincts, such commissioner shall take as a basis the poll books of the number of votes cast at the last preceding presidential election. At least six months before each subsequent presidential election the election commissioners may revise and rearrange the precincts and increase or decrease their number on the basis of the votes cast at the previous presidential election for President, making such precincts to contain, as near as practicable, four hundred voters, measured by the vote of such election. The precincts in each ward shall be numbered consecutively.

SEC. 7. After the said commissioners are appointed and qualified, they shall prepare for a new and general registration of voters for the next city election or State election, as the case may be; such registration shall be continued and revised as herein provided.

SEC. 8. Such board of election commissioners shall, at least sixty days prior to the first city or State election after this act becomes a law, select and choose four electors as judges of election for each precinct in such city; they must be citizens of the United States, and entitled to vote in such precinct at the next election, must be men of good repute and character, be of good understanding and capable, they must reside in the ward in which the precinct for which they are selected to act is situated, and not hold any office or employment under the United States, the State of Missouri or the city in which such election is held, and not be candidates for any office at the next ensuing election; two clerks of election for each precinct shall also be selected within the same time by such commissioners, who shall possess the same qualifications as the judges aforesaid. Before entering upon the duties of their offices, each judges and clerk, so appointed, shall take and subscribe to like oath as that taken and subscribed by the election commissioners, and file the same in the office of election commissioners. Said judges and clerks shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal elections in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said commissioners shall make an appointment as herein provided to fill such vacancy. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks.

SEC. 9. Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day of registration, Tuesday, three weeks before such election. A new general registration shall be made in every year thereafter in which a presidential election occurs, and just prior thereto the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be pro-

vided and furnished to each board of registration by the said election commissioners for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the residence of such person shall appear in the first column. The registry shall be ruled and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall
44 not be a number, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor above that as the second or such other floor as it may be. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full. Under the column "nativity," the State, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence." the periods, by days, months, or years, stated by the applicant in precinct, city and State. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention," the word "yes." Under the column "qualified voter," the word "yes," or "no," as the fact shall appear or be determined by the board of registry, it being, however, required of them to designated as a qualified voter any male person who, if otherwise qualified, shall not, at the time of making application, be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application," the month, day and year when the applicant presented himself and was adjudged a qualified voter in the election precinct. Under the column "signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is written for him.

SEC. 10. The judges of election aforesaid shall constitute the board of registry in the precinct for which they are appointed. In the registration of voters, said board of registry shall proceed as follows:

They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this State; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry books and shall make the entries therein required by this act, and one of the judges shall ask the question as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said books. The name of every applicant shall be entered in such registry books, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same
45 column "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although otherwise qualified. At the end of the day's registration, each of said judges shall sign his name at the end of the list on each page of the registration book. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election, shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judge or clerk as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

SEC. 11. Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and

during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor any officer, soldier or marine in the regular Army or Navy of the United States, nor while kept at any poor-house or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident.

SEC. 12. The election commissioners shall prepare and furnish to the board of registration in each precinct two blank books, to be known as "verification lists," each page to be ruled into columns, and contain pages sufficient for each street, avenue and alley in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand pages of such "verification lists," arranging them according to the street, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the pages of such "verification lists," headed (*and*) "registered names," according to the street number as above indicated. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon such registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists," such board, or one of said judges, shall make a cross or checked mark in ink
46 opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter, and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists. Said board of registration shall, before eight o'clock on the following day, return said "verification lists" to the office of such election commissioners.

SEC. 13. The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists" does not reside at the place designated

thereby, they shall make a check-mark opposite such name. If, in making any such canvass, any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor, and be liable to a penalty not to exceed $50. In making such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy shall be returned to the election commissioners. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock, on either of said days, the election commissioners shall immediately appoint a clerk of the same politics, in place of the one absent, or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by imprisonment for not less than one month nor more than one year.

SEC. 14. Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check-mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioners. A similar notice shall also be served by one of said canvassers, either at the time said canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he be not found, at the place designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than ten o'clock Friday morning of the week of such canvass. Any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor, punishable by imprisonment not less than one
47 month nor more than one year. And it shall be the duty of said commissioners, when complaint is made to them, to in-

vestigate the action of such clerks or canvassers, and to cause them to be punished for such neglect of duty.

SEC. 15. On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the board of registration during that session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after, such examination and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes," under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall not appear and show cause why his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registration to the office of the election commissioners. If any person, already registered, shall appear before said board at such session and make oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase his name, but shall make the correction to his residence in the books of registration.

SEC. 16. Any voter or voters in the ward containing such precinct may make application in writing before said board of registration at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application,

the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application, the board of registration conclude to erase the name they shall so note it on the register. Such person may appear before the board of election commissioners for the purpose of reinstating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward.

SEC. 17. At the end of the last session provided for, the said board of registration and said clerks shall compare and correct the registers aforesaid, and make them correspond and agree; and said judges shall then, immediately following the last name on each page
48 of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioners; thereupon the said commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address, and arranged according to the streets, avenues or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands; and upon application a copy of the same shall be given to any person in such precinct. Said registers in the office of the election commissioners shall be public records and open to public inspection.

SEC. 18. Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration shall appear in person and make application, under oath, as in the case of the first registration herein provided. The same form and blanks and methods of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the election commissioners
49 in every subsequent registration, as is directed herein for the first registration, and election following the same. If any special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry.

SEC. 19. At every election held in such cities between the general registrations above referred to, the last general registry shall be used, and for that purpose the board of registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m., until 10 o'clock p. m., on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this act becomes a law and the next general registration

provided for herein, the registry books of qualified voters in such cities at the last general city or State election, and used in said election as the registry of qualified voters of such cities, and the registry of qualified voters under section 5 of this act, together with the registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 9 of this act by said election commissioner for the registration required to be made in every presidential year by this act; and the registry and other books no longer required, or used, shall be kept and preserved in the office of the election commissioners.

SEC. 20. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application, in writing, and file the same with the election commissioners, to be heard and considered by the board of appeals, as in other cases provided.

SEC. 21. Said election commissioners shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a board of appeals, to hear such applications and appeals as shall be made to be placed upon the registry of voters of any particular precinct, of persons who applied for registration and were refused by the board of registration, or had their names stricken from the registry by said board. Said board of appeals may also register as qualified voters, such persons as may make application, who failed to appear before the board of registration because of sickness, forgetfulness, absence from the city or other reasonable cause, at the time of precinct registration.

SEC. 22. It shall be the duty of such election commissioners to give ten days' notice in two daily newspapers of such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot-box, poll books, verification lists, and necessary blanks and stationery, packages of ballots and key to box, to one of said judges of election, at his residence in such precinct.

SEC. 23. The election polls shall be open at 6 o'clock in the morning and continue open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof. If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified, or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall
50 administer to such judge or clerk the oath required of the judge or clerk originally appointed, and such appointee per-

form like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be imprisoned not less than three months nor more than one year, or fined not less than $200 nor more than $1,000.

SEC. 24. Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by a judge that he protested against such obstruction of the view of the ballot-bax, and was overruled by a majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct.

SEC. 25. Each of the clerks of the election shall keep a poll book which contains a column headed "number," another headed "residence," and another headed "names of voters." The name and street and number of the residence of such voter shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number."

SEC. 26. One of the said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll book, in the column headed "number," and another judge shall put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, marked "voted," or the letter "V." If such person so registered shall be challenged or disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause of challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received ac-

cordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter.

SEC. 27. Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the order of such judges of election. At every registration and election, each of the political parties shall have a right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth, as will enable him to see each person as
51 he offers to register or vote, and who shall be protected, in the discharge of his duty, by the judges of election. Two persons of each political party, represented on the ballot, of good character and standing, may be admitted, by the judges, into the polling place to be present during the canvass of the votes and the making of the returns.

SEC 28. As soon as the poll of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the votes. Such canvass shall not be adjourned or postponed until it shall be fully completed, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at such entrance to the room where such canvass is begun or about to take place, to exclude noisy or disorderly persons, and to keep the peace.

SEC. 29. The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll list do not agree after such rejection, they shall reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioners; and the ballots or poll lists agreeing or being made to agree in this way, the board shall proceed to count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are *on*, or supposed to be alike, and exclude from such files any which may have a name or any erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same name and count them by the tens, carefully examining each name of each of said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner, and call the names of the persons named in the ten ballots, and

the offices for which they are designated, and the poll clerks shall tally ten votes for each of such persons. When they shall have gone through such file of ballots containing the same name by tens in that way, and when the clerks shall have tallied all the votes by tens for each of said persons, they shall then take up the next pile of ballots containing the same names, and shall count them by tens in the same way, and shall call the names of the persons named in said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed, and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kind of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the persons proper to be voted for on such ballots had been omitted or erased, usually called "scratched tickets." They shall be canvassed separately by the judges, and each name called out to the clerks and the office for which it is designated, and the clerks making tally of the same. When all ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the number, one of them shall announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name.

52 SEC. 30. Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks, who shall tally the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the tally-sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such tally-sheets and returns the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct

return of all votes upon any such proposition, and certify the same to the election commissioners, as provided herein in other cases.

SEC. 31. The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll books used at such election. Each of these statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, and city in relation to which such statement shall be made, and the time of opening and closing of the polls of such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly written and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor, in writing, and a copy thereof signed by himself shall be enclosed in an envelope, which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened. And the envelope shall be directed on the outside to the election commissioners. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envelope, securely sealed and signed and directed on the outside of envelope to said election commissioners. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward.

SEC. 32. The poll books which contain the statement of returns shall be placed in the ballot-box, and the ballot-box shall then be locked and the key removed; whereupon, said judges of election shall all write their names upon a slip of paper of sufficient length for the following purposes: Said slip of paper, after the signing of their names thereon by said judges, shall then be pasted over the keyhole of the said box and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy the
53 signatures written thereon, and when the key shall be inserted in the keyhole it will tear the paper so pasted over the keyhole. Such paper shall be fastened with some adhesive material and so as not to permit the removal of such slip of paper without defacing it.

SEC. 33. The judges shall fold in two folds and string closely upon a string or wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a

firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed in writing or print, the number of the precinct, date on which such election was held, and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective," or "objected," or "rejected," in such sealed package or envelope to the election commissioners and deliver said ballot-box and the key thereto immediately after signing the statement of the result of the canvass and tally-sheets and the sealing of the ballot-box, go to the office of the election commissioners and deliver said ballot-box and the key thereto to said election commissioners, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-boxes, said commissioners shall give a receipt therefor to said judges, and shall place them properly arranged in the order of precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioners shall securely keep said ballot-boxes for twelve months, not opening or inspecting them nor allowing any one else to do so, except upon order of court in case of contested election, or when it shall be necessary to produce them at the trial of an offense committed under this act. At the end of twelve months after said election, said ballots shall be destroyed. Provided, that if any contest of the election of any officer voted for at such election, or prosecution under this act shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined.

SEC. 34. Another judge shall take a statement of the votes cast into his possession, sealed up in an envelope as aforesaid, and one of the clerks shall take a tally-sheet, sealed up in an envelope as aforesaid, and the judge having possession of statement and the clerk having possession of tally-sheet, shall each, before twelve o'clock of the next day after such election, deliver the statement and tally-sheet to the said election commissioners, and take a receipt from them therefor. And it shall be the duty of the said election commissioners to receive the same, and to keep safely under lock and key until ordered to be surrendered as herein provided.

SEC. 35. The said election commissioners, upon the receipt of said ballot-box and key thereto, shall note the condition of seal or stamp on said box, and enter the fact touching the same upon a book kept by them, together with the name of the judge who returns such ballot-box; he shall thereupon open said ballot-box and remove the poll books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerks taking ballots, ballot-boxes, statement, tally or poll books, to be delivered to the election commissioners, shall fail to deliver the same to said election commissioners within three hours after the close of the canvass of the votes as aforesaid, or shall fail or refuse to comply with the provisions of this act, he or they shall be deemed guilty of a misdemeanor, and

upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisonment not more than six months, or by both such fine and imprisonment.

SEC. 36. Within eight days after the close of such election such board of election commissioners shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for governor and lieutenant governor on one sheet; all votes for
54 other State officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of Congress and for senators and representatives to the General Assembly on another sheet; all votes for county officers on another sheet; all votes for city officers on another sheet; all votes for any other officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitted to a vote of the people on another sheet. It shall be the duty of such board to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or results, and a certified copy thereof, shall be treated everywhere within the State, and by all public officers, with the same force and effect as the abstract of votes now authorized by the laws of the State in such cases made and provided.

SEC. 37. The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application.

SEC. 38. If, upon opening the various returns so made, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges and clerks of any fraud in any respect touching such returns, it shall then be the duty of the board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to cause such parties who were present at the time of such proclamation to come before them, and a subpœna may be issued by the election commissioners compelling any such witness to come before such board and give their evidence touching the matter; and it shall be the duty of said board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judges of election after the canvass by them in such precinct, the result, so de-

cared, shall be binding and conclusive, except in case of election contests.

SEC. 39. Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts; or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, made in pursuance of this act, or otherwise as in this act provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious
55 name, or any name of any person, except as provided in this act, upon conviction, shall be adjudged guilty of felony and punished in the penitentiary not less than two years.

SEC. 40. Any person who shall falsely personate an elector, or other person, and vote, or attempt or offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having voted once, shall vote, or attempt to vote again; or shall knowingly, willfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by any such means induce, or attempt to induce, any such voter to exercise any such right, shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years.

SEC. 41. Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such elec-

tion, or any false certificate or statement of the result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of a felony, and be punished by imprisonment in the penitentiary not less than two years.

SEC. 42. If any person other than a judge of election, shall at any such election knowingly or willfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes; or if any judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, willfully or fraudulently put any ballot or other paper having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry, as herein provided, or who shall be entitled to vote under this act; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; or shall remove any ballot or semblance thereof from, or add any ballot or semblance thereof to, the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed. Every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years.

SEC. 43. If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or hindered; or whereby the lawful proceedings of any judge of election, or board of registration, or clerk or other officer of such election or
56 challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment not less than thirty days nor more than one year.

SEC. 44. It shall be unlawful for any judge of election, clerk or person designated as provided in this act, or any person or persons within the polling place, to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment not less than ten or more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars.

SEC. 45. It shall be the duty of such election commissioners to aid in the prosecution of all crimes and offenses against this act, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any

law of the State concerning registration and election, and when, in the judgment of such election commissioners such offense has probably been committed, it shall be their duty to cause a prosecution to be instituted against such person.

SEC. 46. In all cities not within counties such election commissioners, deputy election commissioners, judges and clerks of election and registration and clerks and assistants employed by the board of election commissioners shall be paid by the city. The members of said boards of election commissioners shall each receive a salary of $2,500 a year, and deputy election commissioner a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the election commissioners shall each receive a salary of $4.00 per day for the time actually employed, payable monthly. All office and other expenses incurred by said board of election commissioners, and all office and other expenses and all costs and expenses of registration and election in such cities shall be paid out of the city treasury. All printing, binding, books, stationery, etc., shall be paid for in the same manner and contracted for by the board of election commissioners.

SEC. 47. The act of a majority of such board of election commissioners shall in all cases arising under this act be considered as the act of said board of election commissioners.

SEC. 48. Said board of election commissioners shall audit all the claims of the judges of election and of registration and all other claims, expenses and accounts under this act, and shall draw a warrant therefor upon the proper officer.

SEC. 49. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act, entitled "An act to create a board of election commissioners, etc., approved May 31st, 1895," is hereby repealed.

Approved June 19, 1899.

Originated in the house.

W. J. WARD,
*Speaker House of Representatives.*
H. A. NEWMAN,
*Chief Clerk House of Representatives.*
A. H. BOLTE,
*President of the Senate.*
CORNELIUS ROACH,
*Secretary of the Senate.*

I hereby certify that I have carefully compared the foregoing bill with the engrossed copy of the original thereof together with house amendment to title and find the same to be truly enrolled.

MATTHEW COFFEY,
*Chairman Committee on Enrolled Bills.*

Approved June 19, 1899.

LON V. STEPHENS, *Governor.*

STATE OF MISSOURI, } ss:
*County of Cole,* }

Charles Schweickardt, T. C. Martin, F. W. Mott, Charles F. Busche, James M. Rollins, senators of the 40th General Assembly of
57 the State of Missouri, being first duly sworn, upon their oaths hereby protest against house bill No. 760, which purported to pass and be adopted by the senate and house of representatives of the fortieth General Assembly of the State of Missouri, being signed by the presiding officer of the said senate for the following reasons:

Because said house bill No. 760 is a local and special law, and no notice of the intention to apply therefor was published in the locality where the matter or thing to be affected was situated, stating therein the substance of the contemplated law, nor was any such notice published for at least thirty days prior to the introduction into said General Assembly of said bill in the manner provided by law or in any other manner *of* form whatever, nor was any evidence of such notice having been published exhibited to said General Assembly before said bill or act was passed by either the said house of representatives or the said senate, and no such notice is recited in said act, or any notice whatever, all of which is in violation of section 54 of article 4 of the constitution of the State of Missouri.

CHAS. SCHWEICKARDT.
T. C. MARTIN.
[SEAL.] F. W. MOTT.
CHAS. F. BUSCHE.
JAS. M. ROLLINS.

Subscribed and sworn to before me this 20th day of May, A. D. 1899. My commission expires January 24, 1902.

A. M. HOUGH,
*Notary Public.*

EXECUTIVE DEPARTMENT,
STATE OF MISSOURI, JEFFERSON CITY, *June* 19, 1899.

To the secretary of state.

SIR: I have the honor to forward to you herewith, with my approval endorsed thereon, the following bills, which reached me within the ten days next before the final adjournment of the 40th General Assembly.

* * * * * * *

House bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Respectfully, LON V. STEPHENS, *Governor.*

"RELATORS' EXHIBIT '2.'"

(19835.)

An ordinance making appropriations to meet interest maturing and other expenses of city government herein named, for the fiscal year, beginning April eleventh, eighteen hundred ninety-nine, and ending April ninth, nineteen hundred, including bills unpaid at the beginning of the fiscal year, and transferring certain amounts of temporary appropriations back to their respective revenues.

Be it ordained by the municipal assembly of the city of St. Louis, as follows:

* * * * * * *

Election and registration.—For salaries of commissioners and assistants, twenty-seven thousand three hundred dollars ($27,300.00).

For salaries of judges and clerks of election, twenty-eight thousand one hundred sixteen dollars ($28,116.00).

For rent of registration offices and polling places, six thousand six hundred dollars ($6,600.00).

58 For printing, stationery, office expenses, furniture, and for making maps and seals, seven thousand dollars ($7,000.00).

For ballot-boxes, booths, signs, delivering, returning and storing booths, three thousand two hundred fifty dollars ($3,250.00).

For advertising and postage, two thousand two hundred dollars ($2,200.00).

For court costs in matter of election, three hundred dollars ($300.00).

For bills unpaid at the beginning of the fiscal year, one thousand eighty-three dollars twenty-five cents ($1,083.25).

Aggregating, seventy-five thousand eight hundred forty-nine dollars, twenty-five cents ($75,849.25).

* * * * * * *

Approved August 7, 1899.

59 RESPONDENT'S EXHIBIT "A." J. A. L.

*House Bill No. 760.*

(Fortieth General Assembly.)

Introduced by Mr. Nesbit.
Read first time and 300 copies ordered printed March 3, 1899.
H. A. NEWMAN, *Chief Clerk.*

An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. In all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith.

SEC. 2. Within thirty days after this act becomes a law, the governor, by and with the advice and consent of the senate, shall appoint for each of such cities and election commissioner, who shall hold his office for the term of four years, and until his successor is commissioned and qualified, and in case of vacancy for any cause the same shall be filled by the governor for the unex-
60 pired term; such commissioner shall be a legal voter, a resident of the State for at least five years, and of such city for a like term, and be of approved integrity and capacity; he shall hold no office, and shall be ineligible to any elective or appointive office during the term of his office; he shall, before entering upon the duties of his said office, take and subscribe an oath to support the Constitution of the United States and of this State, and to demean himself faithfully in office, and give bond to the State in the sum of ten thousand dollars with securities to be approved by the governor, conditioned for the faithful and honest performance of the duties of his said office and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the secretary of state. Such election commissioner shall make all necessary rules and regulations, not inconsistent with this act, with reference to the registration of voters and conduct of elections; and shall have charge of and make provisions for all elections, general, special, local, municipal, State and county and of all others of every description, to be held in such city or in any part thereof at any time.

SEC. 3. Such election commissioner shall appoint and commission one deputy election commissioner who shall hold his office during the pleasure of said commissioner, and shall be vested with all the powers and duties of the commissioner during his absence, sickness or inability to perform his duties; and such commissioners shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said deputy election commissioner and employés shall be subject to the same restrictions and take and subscribe like oath as said commissioner, and file the same in the office of the commissioner. Said election commissioner, deputy election commissioner, judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their several offices, and in the affairs and business thereof. Said election commissioner shall perform all the duties and take the place of the board of election commissioners of such cities immediately after this act becomes a law. The offices and boards of election commissioners as now constituted and existing in such cities to which this act applies, are hereby abolished, and the commissions of such election commissioners hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to the cities named herein, are hereby repealed.

61

SEC. 4. The office of such election commissioner shall be in the city hall of such city, and shall be kept open for the transaction of the duties and business of said office of election commissioner during business hours. Upon the opening of such office, the officers or other custodians of said property shall, upon demand by said commissioner, turn over to him all books of registration, poll books, tally-sheets, ballot-boxes, form blanks, stationery and property of every description in their hands in any way relating to registration and elections, or connectid therewith in any manner. Said election commissioner shall purchase and provide all necessary ballot-boxes, and all books of registration, poll books, tally-sheets, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith; and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof.

62

SEC. 5. Said election commissioner or deputy election commissioner shall have the power and is hereby authorized to register any person or persons in said office of election commissioner, and re-register or transfer any person or persons, whom may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except such days as intervene between the completion of the registration herein provided and the next following election;

a change of residence from one place in a precinct to another place or part thereof, shall not necessitate a re-registration or transfer, or deprive the registered voter of his right to vote in said precinct. Such registration of voters by said commissioner shall be done in the same form and manner and in the same books as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration in such precincts.

SEC. 6. It is hereby made the duty of such election commissioner for such cities within six months after taking effect of this act, to divide such cities into election precincts regarding ward lines and composed of compact and contiguous territory, which shall contain as nearly as practicable, four hundred actual voters; and in making such division and establishing such precincts, such commissioner shall take as a basis the poll books of the number of votes cast at the last preceding presidential election. At least six months before each subsequent presidential election the election commissioner may revise and rearrange the precincts and increase or decrease their number on the basis of the votes cast at the previous presidential election for President, making such precincts to contain, as near as practicable, four hundred voters, measured by the
63 vote of such election. The precincts in each ward shall be numbered consecutively.

SEC. 7. After the said commissioner is appointed and qualified, he shall prepare for a new and general registration of voters for the next city election or State election, as the case may be, such registration shall be continued and revised as herein provided.

SEC. 8. Such election commissioner shall, at least sixty days prior to the first city or State election after this act becomes a law, select and choose three electors as judges of election for each precinct in such city; they must be citizens of the United States, and entitled to vote in such precinct at the next election, must be men of good repute and character, be of good understanding and capable, they must reside in the ward in which the precinct for which they are selected to act is situated, and not hold any office or employment under the United States, the State of Missouri or city in which such election is held, and not be candidates for any office at the next ensuing election; two clerks of election for each precinct shall also be selected within the same time by such commissioner, who shall possess the same qualifications as the judges aforesaid. Before entering upon the duties of their offices, each judge and clerk, so appointed, shall take and subscribe to, like oath as that taken and subscribed by the election commissioner, and file the same in the office of election commissioner. Said judges and clerks shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal election- in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said commissioner shall make an appointment as herein provided to fill such vacancy. One of said judges and one of said clerks of election shall belong

—and be a member of the party of opposite politics to said election commissioner.

64 SEC. 9. Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, shall be on the Saturday following; and the third day, Tuesday, three weeks before such election, which may occur after the appointment of such election commissioner at the place designated by such commissioner. A new general registration shall be made in every year thereafter in which a presidential election occurs, and just prior thereto, the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be provided and furnished to each board of registration by the said election commissioner for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the residence of such person shall appear in the first column. The register shall be ruled, and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the flooor on which he resides or the number or location of the room or rooms occupied by
65 him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor *floor* above that as the second or such other floor as it may be. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full. Under the column "nativity," the State, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence," the periods, by days, months or years, stated by the applicant in precinct, city and State. Under the column "native," the word "yes;" under the columa "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention" the word "yes." Under the column "qualified voter," the word "yes" or "no," as the fact shall appear or be determined by the board of registry, it being however, required of them to designate as a qualified voter any male person who, if otherwise qualified,

shall not, at the time of making application, be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application" the month, day and year when the applicant presented himself and was adjudged a qualified voter in the election precinct. Under the column "signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is
66 written for him.

SEC. 10. The judges of election aforesaid shall constitute the board of registration in the precinct for which they are appointed. In the registration of votes, said board of registration shall proceed as follows: They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this State; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry books and shall make the entries therein required by this act, and one of the judges shall ask the questions as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said book. The name of every applicant shall be entered in such registry book, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same column, "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for such registration, shall
67 be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although

otherwise qualified. At the end of each day's registration, each of said judges shall sign his name at the end of the list on each page of the registration books. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election, shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judge or clerk as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

SEC. 11. Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, or of
68 a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor an officer, soldier or marine in the regular Army or Navy of the United States, nor while kept at any poor-house or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident.

SEC. 12. The election commissioner shall prepare and furnish to the board of registration in each precinct two blank books to be known as "verification lists," each page to be ruled into columns and contain pages sufficient for each street, avenue and alley, in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand page of said "verification lists," arranging them according to the street-, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the page of such "verification lists," headed "registered names," according to the street number as above indicated. On the opposite page, headed "names not registered," the name of the same street, avenue, alley or court shall be written in the second column. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person
69 upon said registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists,"

such board, or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists, but shall go upon such list in case any one of the judges desires. Said board of registration shall, before eight o'clock of the following day, return said "verification lists," to the office of such election commissioner.

SEC. 13. The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists," does not reside at the place designated thereby, they shall make a check-mark opposite such name. If, in making any such canvass any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor, and liable to a penalty not to exceed $50. In making such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy shall be returned to the election commissioner. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock on either of said days, the election commissioner shall immediately appoint a clerk, of the same politics, in place of the one absent or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by imprisonment in the city jail for not less than one month nor more than one year.

SEC. 14. Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check-mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased

from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioner. A similar notice shall also be served by one of said canvassers either at the time such canvass is being made or before the following Saturday, by leaving the same with the party, if found, or if he be not found at the place designated in such registry and "verification lists," by
71 leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than 10 o'clock Friday morning of the week of such canvass. Any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor punishable by imprisonment in the city jail not less than one month nor more than one year. And it shall be the duty of said commissioner, when complaint is made to him, to investigate action of such clerks or canvassers, and to cause them to be punished for such neglect of duty.

SEC. 15. On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m. for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the board of registration during that
72 session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after such examination and hearing the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes" under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization

a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hours of said session, if any person so notified to appear at such session shall not appear and show cause why his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists," aforesaid after the final revision, shall be at once returned by the board of registration to the office of the election commissioner. If any person, already registered, shall appear before said board at such session and makes oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase his name, but shall make
73 the correction to his residence in the books of registration.

SEC. 16. Any voter or voters in the ward containing such precinct may make application in wr-ting before said board of registration at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application, the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application, the board of registration conclude to erase the name they shall so note it on the register. Such person may appear before the board of appeals for the purpose of reinstating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward.

SEC. 17. At the end of the last session provided for, the said board of registration and said clerks shall compare and correct the registers aforesaid, and make them correspond and agree; and said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioner; thereupon the said commissioner shall at once cause copies to be made of such registers, of all the names upon the same, with the address and arranged according to the streets, avenues, or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands; and upon application, a copy of the same shall be given to any person in such precinct. Said registers in the office of the election commissioners, shall be public records and open to
74 public inspection.

SEC. 18. Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration shall appear in person and make application under oath, as in the case of the first registration herein provided. The same form and blanks and methods of proceeding shall be had before and by the

board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the election commissioners in every subsequent registration, as is directed herein for the first registration and election following the same. If any special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry.

SEC. 19. At every election held in such cities between the general registrations above referred to, the last general registration shall be used, and for that purpose the board of registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m. until 10 o'clock p. m. on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this act becomes a law and the next general registration provided for herein, the registry books of qualified voters in such cities at the last general city or State election, and used in said election as the registry of qualified voters of such cities, and the registry of qualified voters under section 5 of this act, together with the registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 9 of this act by said election commissioner for the registration required to be made in every presidential year by this act; and the registry and other books no longer required, or used, shall be kept and preserved in the office of the election commissioner.

SEC. 20. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge, any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application in writing and file the same with the election commissioner, to be heard and considered by the board of appeals, as in other cases provided.

SEC. 21. Two justices of the peace of such city, of opposite politics to be designated and selected by the election commissioner, and said election commissioner shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a board of appeals, to hear such application and appeals, as shall be made to be placed upon the registry of voters of any particular precinct of persons who applied for registration and were refused by the board of registration, or had their names stricken from the registry by said board. Said board of appeals may also register as qualified voters, such persons

as may make application, who failed to appear before the
76 board of registration because of sickness, forgetfulness, absence from the city or other reasonable cause, at the time of precinct registration.

SEC. 22. It shall be the duty of such election commissioner to give ten days' notice in two daily newspapers of such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot-box, pool books, verification lists, and necessary blanks and stationery, packages of ballots and key to box, at his residence in such precinct.

SEC. 23. The election polls shall be open at 6 o'clock in the morning, and continued open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof. If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall administer to such judge or clerk the oath required of the judge or clerk originally appointed, and such appointee perform like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be
77 imprisoned not less than three months nor more than one year in the city jail, or fined not less than $200 nor more than $1,000.

SEC. 24. Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by the judge that he protested against such obstruction of the view of the ballot-box, and was overruled, by the majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct.

SEC. 25. Each of the clerks of the election shall keep a poll book which contains a column headed "number," another headed "residence," and another headed "names of voters." The name and

street and number of the residence of such voter shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number."

SEC. 26. One of said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll books, in the column headed "number," and another judge shall
78 put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, mark "voted," or the letter "V." If such person so registered shall be challenged as disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause — challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter.

SEC. 27. Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the order of such judges of election. At every registration and election, each of the political parties shall have the right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth, as will enable him to see each person as he offers to register or vote, and who shall be protected, in the discharge of his duty by the judges of election. Two persons of each political party, represented on the ballot, of good character and standing may be admitted, by the judges, into the polling
79 place to be present during the canvass of the votes and the making of the returns.

SEC. 28. As soon as the polls of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the vote so cast. Such canvass shall not be adjourned or postponed until it shall be fully completed, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at

such entrance to the room where such canvass is begun or about to take place, to exclude noisy and disorderly persons, and to keep the peace.

SEC. 29. The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll list do not agree after such rejection, they shall reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioner; and the ballots or poll lists agreeing or being made to agree in this way, the board shall proceed to count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are on, or supposed to be alike, and exclude from such files any which may have a name or an erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots
80 which contain the same name and count them by the tens carefully examining each name of each of said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner, and call the names of the persons named in the ten ballots, and the offices for which they are designated, and the poll clerks shall tally ten votes for each of such persons. When they shall have gone through such file of ballots containing the same name by tens in that way, and when the clerks shall have tallied all the votes by ten for each of said persons they shall then take up the next pile of ballots containing the same names, and shall count them by tens in the same way, and shall call the names of the persons named in said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kind of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the person proper to be voted for on such ballots has been omitted or erased, usually called "scratch tickets." They shall be canvassed separately by one of the judges, which judge shall call each name to the clerks and the office for which it is designated, and the clerks making tally of the same. When all the ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate,
81 and when they agree upon the number, one of them shall

announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name.

SEC. 30. Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks who shall tally the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the tally-sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such tally-sheets and return the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition, and certify the same to the election commissioner, as provided herein in other cases.

82 SEC. 31. The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll books used at such election. Each of these statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, and city in relation to which such statement shall be made, and the time of opening and closing of the polls of such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly written and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor, in writing, and a copy thereof signed by himself shall be enclosed in an envelope which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened.

And the envelope shall be directed on the outside to the election commissioner. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envelope, securely sealed and signed and directed on the outside of envelope to said election commissioner. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward.

83 SEC. 32. The poll books which contain the statement of returns shall be placed in the ballot-box and the ballot-box shall then be locked and the key removed; whereupon said judges of election shall all write their names upon a strip of paper of sufficient length for the following purposes: Said strip of paper, after the signing of their names thereon by said judges, shall then be pasted over the keyhole of the said box and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy the signatures written thereon, and when the key shall be inserted in the keyhole it will tear the paper so pasted over the keyhole. Such paper shall be fastened with some adhesive material as not to permit the removal of such slip of paper without defacing it.

SEC. 33. The judge shall fold in two folds and string closely upon a string of wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed, in writing or print, the number of the precinct, date on which such election was held and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective," or "objected," or "rejected," in such sealed package or envelope to the election commissioner. Two of said judges of opposite politics shall, immediately after signing the statement of the result of the canvass and tally-sheets and the sealing of the ballot-box, go to the office of the election commissioner and deliver said ballot-box to said election commissioner, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-

84 boxes, said commissioner shall give a receipt therefor and shall place them properly arranged in the order of precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioner shall securely keep said ballot-boxes for twelve months, not opening or inspecting them nor allowing any one else to do so, except upon order of court in case of contested election, or when it shall be necessary to produce them at the trial of any offense committed under this act. At the end of twelve months after said election, said ballots shall be destroyed: Provided, that if any contest of the election of any officer voted for at such election, or prosecution under this act shall be pending at

the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined.

SEC. 34. One of the judges of election shall take charge of said ballot- — and its contents so inclosed and one of the other judges shall receive and hold the key thereto. The other judge shall take a statement of the votes cast into his possession sealed up in an envelope as aforesaid, and one of the clerks shall take a tally-sheet, sealed up in an envelope as aforesaid, and at once the judge having possession of such ballot-box shall deliver the same with the contents as aforesaid to the election commissioner, with the seal unbroken, and shall receive a receipt therefor, and at the same time the judge having possession of the key shall deliver the same to said commissioner and receive a receipt therefor, and the judge having possession of statement and the clerk having possession of tally-sheet, shall each, before twelve o'clock of the next day after such election, deliver the statement and tally-sheet to the said election commissioner, and take a receipt from him therefor. And it shall be the duty of the said election commissioner to receive
85 the same, and to keep, safely under lock and key until ordered to be surrendered as herein provided.

SEC. 35. The said election commissioner, upon the receipt of said ballot-box and key thereto shall note the condition of seal or stamp on said box, and enter the fact touching the same upon a book kept by him, together with the name of the judge who returns such ballot box; he shall thereupon open said ballot-box and remove the poll books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerk taking ballots, ballot-boxes, statement, tally or poll books, to be delivered to the election commissioner, shall fail to deliver the same to said election commissioner within three hours after the close of the canvass of the votes as aforesaid, or shall fail or refuse to comply with the provisions of this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisonment not more than six months, or by both such fine and imprisonment.

SEC. 36. Within eight days after the close of such election — board of appeals aforesaid, who are hereby declared a board of canvassers for such city, shall publicly open all the returns left respectively with the election commissioner, and shall make abstracts of statements of all the votes for governor and lieutenant governor on one sheet; all votes for other State officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for senators and representatives to the General Assembly on another sheet; all votes for county officers on another sheet; all votes for city officers on another sheet; all votes for any other officer on a separate and appropriate
86 sheet; all votes for, and all votes against any proposition which may be submitted to a vote of the people on another

sheet. It shall be the duty of such board of canvassers to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or results, and a certified copy thereof, shall be treated everywhere within the State, and by all public officers, with the same force and effect as the abstract of votes now authorized by the laws of the State in such cases made and provided.

SEC. 37. The election commissioner shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application.

SEC. 38. If, upon opening the various returns so made by the board of canvassers aforesaid, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges and clerks of any fraud in any respect touching such returns, it shall then be the duty of said canvassing board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to call
87 such parties who were present at the time of such proclamation to come before them, and a subpœna may be issued by the election commissioner compelling any such witness to come before such board and give their evidence touching the matter; and it shall be the duty of said board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judge of election after the canvass by them in such precinct, the result so declared, shall be binding and conclusive, except in case of election contests.

SEC. 39. Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts; or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, made in pursuance of this act, or otherwise as in this act provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal

right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration, to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious name, or any name of any person, except as provided in this act, upon conviction, shall be adjudged guilty of felony and punished in the penitentiary not less than two years.

88 SEC. 40. Any person who shall falsely personate any elector, or other person, and vote, or attempt to offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having once voted, shall vote, or attempt to vote again; or shall knowingly, willfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by any such means induce, or attempt to induce, any such voter to exercise any such right, shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years.

SEC. 41. Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser, member — board of appeals or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such election, or any false certificate or state-

89 ment of the result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of a felony, and be punished by imprisonment in the penitentiary not less than two years.

SEC. 42. If any person other than a judge of election, shall at any such election knowingly or willfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes; or if any judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, willfully or frauduently put any ballot or other pape having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such

election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry as hereinafter provided or who shall be entitled to vote under this; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; or shall remove any ballot or semblance thereof from, or add any ballot or semblance thereof to, the ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed. Every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years.

SEC. 43. If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any
90 disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or hindered; or whereby the lawful proceedings of any judge of election, or board of registration, or clerk or other officer of such election or challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment in the county or city jail not less than thirty days nor more than one year.

SEC. 44. It shall be unlawful for any judge of election, clerk or person designated as provided in this act, or any person or persons within the polling place, to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment in the county or city jail for not less than ten nor more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars.

SEC. 45. It shall be the duty of such election commissioner to aid in the prosecution of all crimes and offenses against this act, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any law of the State concerning registration and election and when, in the judgment of such election commissioner such offense has probably been committed, it shall be his duty to cause a prosecution to be instituted against such person.

SEC. 46. In such cities, such election commissioner, deputy election commissioner, judges and clerks of election, and clerks and assistants employed by the election commissioner, shall be paid by such city; the election commissioner shall receive a salary of three thousand dollars per year and the deputy election
91 commissioner a salary of two thousand dollars per year, payable monthly, the clerks and assistants employed by the commissioner shall receive a salary of three dollars per day for the time actually employed, payable monthly. All expenses incurred by said election commissioner, and all costs and expenses of registration in such cities shall be paid out of the treasury of such city;

and all printing, binding, books, stationery, etc., shall be paid for in the same manner. All judges and clerks of election, while acting as a board of registration and as judges and clerks of election, and canvassers of registration, under this act, shall be allowed and paid five dollars per day; the justices of the peace acting as a board of appeals shall be allowed and paid five dollars per day for their services, to be paid by such city. Said election commissioner shall audit all the claims of judges and clerks of election, judges and clerks acting as board of registration, and canvassers of registration, and all the other claims under this act, and shall draw a warrant therefor upon such city treasury.

92 RESPONDENT'S EXHIBIT "B."

(Engrossed.)

*House Bill No.* 760.

Fortieth General Assembly.

Introduced by Mr. Nesbit.

Read first time March 3, 1899, and 300 copies ordered printed.

Read second time March 7, 1899, and referred to the committee on elections.

Reported from the committee on elections with recommendation that the bill do pass with accompanying amendments March 24, 1899.

Taken up for engrossment and laid over informally April 8, 1899.

Taken up, amended; ordered engrossed and printed April 15, 1899.

H. A. NEWMAN, *Chief Clerk.*

An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. In all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith.

93 SEC. 2. Within thirty days after this act becomes a law, the governor, by and with the advice and consent of the senate, shall appoint for each of such cities a board of election commissioners,

to be composed of three (3) members, who shall hold their office for the term of four years, and until their successors are commissioned and qualified. One of said commissioners shall be a member of and belong to the leading party politically opposed to that to which the governor belongs. In making the appointment of commissioners, the governor shall designate the commissioner who shall be chairman of the board of election commissioners of such city. In case of vacancy for any cause in said board, the same shall be filled by the governor for the unexpired term until the assemblying of the next legislature, when the name of said commissioner shall be submitted to the senate by the governor for confirmation, as those of the other commissioners when appointed. Such commissioners shall be legal voters, residents of the State for at least five years and of such city for a like term and be of approved integrity and capacity; they shall hold no other office, and shall be ineligible to any elective or appointive office during their term of office, and shall, before entering upon the duties of their said office take and subscribe an oath to support the Constitution of the United States and of this State, and to demean themselves faithfully in office, and each to give bond to the State in the sum of ten thousand dollars with securities to be approved by the governor, conditioned for the faithful and honest performance of the duties of his said office, and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the secretary of state. Said election commissioners shall make all necessary rules and regulations, not inconsistent with this act, with reference to the registration of voters and conduct of elections; and shall have charge of and make provisions for all elections, general, special, local, municipal, State and county and of all others of every description, to be held in such city or in any part thereof, at any time.

SEC. 3. Such election commissioners shall appoint and commission one deputy election commissioner who shall hold his office during the pleasure of said commissioners, and shall be vested with all the powers and duties of the commissioners during their absence, sickness or inability to perform their duties; said deputy election commissioner shall also be the secretary of the board of election commissioners. Such commissioner shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said deputy election commissioner and employés shall be subject to the same restrictions and take and subscribe like oaths as said commissioners, and file the same in the office of the commissioners. Said election commissioners, deputy election commissioners and judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their several offices, and in the affairs and business thereof. Said board of election commissioners shall perform all the duties and take the place of the present board of election commissioners of such cities immediately after this act becomes a law. The offices and boards of election commissioners as now constituted and existing in such

94

cities to which this act applies are hereby abolished, and the commissions of said election commissioners hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to the cities named herein, are hereby repealed.

SEC. 4. The office of such board of election commissioners shall be in the city hall of such city, and shall be kept open for the transaction of the duties and business of said office during business hours. Immediately after the appointment of said commissioners and upon the opening of such office, the officers or other custodians of said property shall, upon demand by said commissioners, turn over to them all books of registration, poll books, tally-sheets, ballot-boxes, form blanks, stationery and property of every description in their hands in any way relating to registration and elections, or connected therewith, in any manner. Said election commissioners shall purchase and provide all necessary ballot-boxes, and all books of registration, poll books, tally-sheets, ballots, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith; and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof.

SEC. 5. Said election commissioners and deputy election commissioner shall have the power and are hereby authorized to register any person or persons in said office of election commissioners, and re-register or transfer any person or persons, who may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except such days as intervene between the completion of the registration herein provided and the next following election; a change of residence from one place in a precinct to another place or part thereof, shall not necessitate a re-registration or transfer, or deprive the registered voter of his right to vote in said precinct. Such registration of voters shall be done in the same form and manner and in the same books as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration in such precincts.

SEC. 6. It is hereby made the duty of such board of election commissioners for such cities within six months after taking effect of this act, to divide such cities into election precincts regarding ward lines and composed of compact and contiguous territory,
95 which shall contain as nearly as practicable, four hundred actual voters; and in making such division and establishing such precincts, such commissioner shall take as a basis the poll books of the number of votes cast at the last preceding presidential election. At least six months before each subsequent presidential election the election commissioners may revise and rearrange the precincts and increase or decrease their number on the basis of the

votes cast at the previous presidential election for President making such precincts to contain, as near as practicable, four hundred voters, measured by the vote of such election. The precincts in each ward shall be numbered consecutively.

SEC. 7. After the said commissioners are appointed and qualified, they shall prepare for a new and general registration of voters for the next city election or State election, as the case may be, such registration shall be continued and revised as herein provided.

SEC. 8. Such board of election commissioners shall, at least sixty days prior to the first city or State election after this act becomes a law, select and choose three electors as judges of election for each precinct in such city; they must be citizens of the United States, and entitled to vote in such precinct at the next election, must be men of good repute and character, be of good understanding and capable, they must reside in the ward in which the precinct for which they are selected to act is situated, and not hold any office or employment under the United States, the State of Missouri or city in which such election is held, and not be candidates for any office at the next ensuing election; two clerks of election for each precinct shall also be selected within the same time by the commissioners, who shall possess the same qualifications as the judges aforesaid. Before entering upon the duties of their offices, each judge and clerk, so appointed, shall take and subscribe to like oath as that taken and subscribed by the election commissioners, and file the same in the office of election commissioners. Said judges and clerks shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal elections in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said commissioners shall make an appointment as herein provided to fill such vacancy. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks.

SEC. 9. Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day of registration, Tuesday, three weeks before such election. A new general registration shall be made in every year thereafter in which a presidential election
96 occurs, and just prior thereto the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be provided and furnished to each board of registration by the said election commissioners for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the residence of such person

shall appear in the first column. The registry shall be ruled, and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor above that as the second or such other floor as it may be. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full. Under the column "nativity," the State, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence," the periods, by days, months or years, stated by the applicant in precinct, city and State. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention" the word "yes." Under the column "qualified voter," the word "yes," or "no," as the fact shall appear or be determined by the board of registry, it being, however, required of them to designate as a qualified voter any male person who, if otherwise qualified, shall not, at the time of making application, be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application," the month, day and year
when the applicant presented himself and was adjudged a
97 qualified voter in the election precinct. Under the column
"signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is written for him.

SEC. 10. The judges of election aforesaid shall constitute the board of registration in the precinct for which they are appointed. In the registration of voters, said board of registration shall proceed as follows: They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer

all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this State; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry books and shall make the entries therein required by this act, and one of the judges shall ask the questions as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said books. The name of every applicant shall be entered in such registry books, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same column "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although otherwise qualified. At the end of the day's registration, each of said judges shall sign his name at the end of the list on each page of the registration book. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election, shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judges or clerk as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

98

SEC. 11. Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, or of a mis-

demeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor an officer, soldier or marine in the regular Army or Navy of the United States, nor while kept at any poor-house or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident.

SEC. 12. The election commissioners shall prepare and furnish to the board of registration in each precinct two blank books to be known as "verification lists," each page to be ruled into columns, and contain pages sufficient for each street, avenue and alley in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand page of such "verification lists," arranging them according to the street, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the pages of such "verification lists," headed "registered names," according to the street number as above indicated. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon such registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists," such board, or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists. Said board of registration
99 shall before eight o'clock on the following day, return said "verification lists" to the office of such election commissioners.

SEC. 13. The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists," does not reside at the place designated thereby, they shall make a check-mark opposite such name. If, in making any such canvass, any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor,

and be liable to a penalty not to exceed $50. In making such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy shall be returned to the election commissioners. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock on either of said days, the election commissioner shall immediately appoint a clerk, of the same politics, in place of the one absent or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor and, on conviction, be punished by imprisonment in the city jail for not less than one month nor more than one year.

SEC. 14. Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioners. A similar notice shall also be served by one of said canvassers either at the time said canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he be not found at the place designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than ten o'clock Friday morning of the week of such canvass. Any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor, punishable by imprisonment not less than one month nor more than one year. And it shall be the duty of said commissioners, when complaint is made to them, to investigate the action of such clerks or canvassers, and to cause them to be punished for such neglect of duty.

SEC. 15. On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet

with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the board of registration during that session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after such examination and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes," under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "cor-
101 rected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall not appear and show cause why his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registration to the office of the election commissioners. If any person, already registered, shall appear before said board at such session and make oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase his name, but shall make the correction to his residence in the books of registration.

SEC. 16. Any voter or voters in the ward containing such precinct may make application in writing before said board of registration at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application, the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application the board of registration conclude to erase the name they shall so note it

on the register. Such person may appear before the board of election commissioners for the purpose of reinstating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward.

SEC. 17. At the end of the last session provided for, the said board of registration and said clerks shall compare and correct the registers aforesaid, and make them correspond and agree; and said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioners; thereupon the said commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address, and arranged according to the streets, avenues or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands; and upon application, a copy of the same shall be given to any person in such precinct. Said registers in the office of the election commissioners, shall be public records and open to public inspection.

SEC. 18. Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration shall appear in person and make application, under oath, as in the case of the first registration herein provided. The same form and blanks
102 and methods of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the election commissioners in every subsequent registration, as is directed herein for the first registration, and election following the same. If any special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry.

SEC. 19. At every election held in such cities between the general registrations above referred to, the last general registry shall be used, and for that purpose the board of registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m. until 10 o'clock p. m., on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this act becomes a law and the next general registration provided for herein, the registry books of qualified voters in such cities at the last general city or State election, and used in said election as the registry of qualified voters of such cities, and the registry of qualified voters under section 5 of this act, together with the

registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 9 of this act by said election commissioners for the registration required to be made in every presidential year by this act; and the registry and other books no longer required, or used, shall be kept and preserved in the office of the election commissioners.

SEC. 20. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application in writing and file the same with the election commissioners, to be heard and considered by the board of appeals, as in other cases provided.

SEC. 21. Said election commissioners shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a board of appeals, to hear such application- and appeals as shall be made to be placed upon the registry of voters of any particular precinct of persons who applied for registration and were refused by the board of registration, or had their names stricken from the registry by said board. Said board of appeals may also register as qualified voters, such persons as may make application, who failed to appear before
103 the board of registration because of sickness, forgetfulness, absence from the city or other reasonable cause at the time of precinct registration.

SEC. 22. It shall be the duty of such election commissioners to give ten days' notice in two daily newspapers of such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot-box, poll books, verification lists, and necessary blanks and stationery, packages of ballots and key to box, to one of said judges of election, at his residence in such precinct.

SEC. 23. The election polls shall be open at 6 o'clock in the morning and continue open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof. If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall administer to such judge or clerk the oath required of the judge or clerk originally appointed, and such appointee perform like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good

cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be imprisoned not less than three months nor more than one year, or fined not less than $200 nor more than $1,000.

SEC. 24. Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by a judge that he protested against such obstruction of the view of the ballot-box, and was overruled by a majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct.

SEC. 25. Each of the clerks of the election shall keep a poll book which contains a column headed "number," another headed "residence," and another headed "names of voters." The name and
104 street and number of the residence of such voter shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number."

SEC. 26. One of the said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll book, in the column headed "number," and another judge shall put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, marked "voted," or the letter "V." If such person so registered shall be challenged or disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause of challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter.

SEC. 27. Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the order of such judge of election. At every registration and election, each of the political parties shall have a right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth as will enable him to see each person as he offers to register or vote, and who shall be protected, in the discharge of his duty by the judges of election. Two persons of each political party, represented on the ballot, of good character and standing, may be admitted, by the judges, into the polling place to be present during the canvass of the votes and the making of the returns.

SEC 28. As soon as the polls of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the votes. Such canvass shall not be adjourned or postponed
105 until it shall be fully completed, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at such entrance to the room where such canvass is begun or about to take place, to exclude noisy or disorderly persons, and to keep the peace.

SEC. 29. The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll list do not agree after such rejection, they shall reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioner; and the ballots or poll lists agreeing or being made to agree in this way, the board shall proceed to count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are *on*, or supposed to be alike, and exclude from such files any which may have a name or any erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same name and count them by the tens, carefully examining each name of each — said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner, and call the names of the persons named in the ten ballots, and the offices for which they are designated, and the poll clerks shall tally ten votes for each of such persons. When they shall have

gone through such file of ballots containing the same name by tens in that way, and when the clerks shall have tallied all the votes by ten- for each of said persons, they shall then take up the next pile of ballots containing the same names, and shall count them by tens in the same way, and shall call the names of the persons named in the said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed, and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kinds of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the persons proper to be voted for on such ballots has been omitted or erased, usually called "scratched tickets." They shall be canvassed separately by the judges,
106 and each name called out to the clerks and the office for which it is designated, and the clerks making tally of the same. When all ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the number, one of them shall announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name.

SECTION 30. Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of the candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks who shall tally the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the tally-sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such tally-sheets and returns the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition, and certify the same to the election commissioners, as provided herein in other cases.

SEC. 31. The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll books used at such election. Each of these statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, and the city in relation to which such statement shall be made, and the time of opening and closing of the polls in such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly written and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming
107 part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor in writing, and a copy thereof signed by himself shall be enclosed in an envelope which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened. And the envelope shall be directed on the outside to the election commissioners. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envelope, securely sealed and signed and directed on the outside of envelope to said election commissioners. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward.

SEC. 32. The poll books which contain the statement of returns shall be placed in the ballot-box, and the ballot-box shall then be locked and the key removed; whereupon, said judges of election shall all write their names upon a slip of paper of sufficient length for the following purposes: Said slip of paper, after the signing of their names thereon by the judges, shall then be pasted over the keyhole of the said box and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy such signatures written thereon, and when the key shall be inserted in the keyhole it will tear the paper so pasted over the keyhole. Such paper shall be fastened with some adhesive material and so as not to permit the removal of such slip of paper without defacing it.

SEC. 33. The judges shall fold in two folds and string closely upon a string or wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed, in writing or print, the number of the precinct, date on

which such election was held and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective" or "objected" or "rejected," in such sealed package or envelope to the election commissioners. Two of said judges of opposite politics shall, immediately after signing the statement of the result of the canvass and tally-sheets and the sealing of the ballot-box, go to the office of the election commissioners and deliver said ballot-box and the key thereto to said election commissioners, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-boxes, said commissioners shall give a receipt therefor to said judges, and shall place them properly arranged in the order of precinct numbers in
108 boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioners shall securely keep said ballot-boxes for twelve months nor opening nor inspecting them nor allowing any one else to do so, except upon order of court in case of contested election, or when it shall be necessary to produce them at the trial of an offense committed under this act. At the end of twelve months after said election, said ballots shall be destroyed: Provided, that if any contest of the election of any officer voted for at such election, or prosecution under this act shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined.

SEC. 34. Another judge shall take a statement of the votes cast into his possession sealed up in an envelope as aforesaid, and one of the clerks shall take a tally-sheet, sealed up in an envelope as aforesaid, and the judge having possession of statement and the clerk having possession of this sheet, shall each, before twelve o'clock of the next day after such election, deliver the statement and tally-sheet to the said election commissioners, and take a receipt from them therefor. And it shall be the duty of the said election commissioners to receive the same, and to keep safely under lock and key until ordered to be surrendered as herein provided.

SEC. 35. The said election commissioners upon the receipt of said ballot-box and key thereto, shall note the condition of seal or stamp on said box and enter the facts touching the same upon a book kept by them, together with the name of the judges who returns such ballot-box; he shall thereupon open said ballot-box and remove the poll books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerk taking ballots, ballot-boxes, statement, tally or poll books, to be delivered to the election commissioners, shall fail to deliver the same to said election commissioners within three hours after the close of the canvass of the vote as aforesaid, or shall fail or refuse to comply with the provisions of this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $25 nor more

than $500, or imprisonment not more than six months, or by both such fine and imprisonment.

SEC. 36. Within eight days after the close of — such board of election commissioners shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for governor and lieutenant governor on one sheet; all votes for other State officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of Congress and for senators and representatives to the General Assembly on another sheet; all
109 votes for county officers on another sheet; all votes for city officers on another sheet; anyother officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitted to a vote of the people on another sheet. It shall be the duty of such board of canvassers to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or result, and a certified copy thereof, shall be treated everywhere within the State, and by all public officers, with the same force and effect as the abstract of votes now authorized by the law of the State in such cases made and provided.

SEC. 37. The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application.

SEC. 38. If, upon opening the various returns so made, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges and clerks of any fraud in any respect touching such returns, it shall then be the duty of the board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to cause such parties who were present at the time of such proclamation to come before them, and a subpœna may be issued by the election commissioner compelling any such witness to come before such board and give their evidence touching the matter; and it shall be the duty of said board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judges of election after the canvass by them in such precinct, the result, so declared, shall be binding and conclusive, except in case of election contests.

SEC. 39. Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts; or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, made in pursuance of this act, or otherwise as in this act provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious name, or any name of any person, except as provided in this act, upon conviction, shall be adjudged guilty of felony and punished in the penitentiary not less than two years.

SEC. 40. Any person who shall falsely personate an elector, or other person, and vote, or attempt or offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having voted once, shall vote, or attempt to vote again; or shall knowingly, willfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by any such means induce, or attempt to induce, any such voter to exercise any such right, shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years.

SEC. 41. Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such election, or any false certificate or statement of the result of such election, or who shall deface, destroy or conceal any statement, tally or

certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of felony, and be punished by imprisonment in the penitentiary not less than two years.

SEC. 42. If any person other than a judge of election, shall at any such election knowingly or willfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, 111 into any box used at such election for the reception of votes; or if any judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, willfully or fraudulently put any ballot or other paper having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry, as herein provided, or who shall be entitled to vote under this act; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot box which has not been canvassed; or shall remove any ballot or semblance thereof from, or add any ballot or semblance thereof to the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed. Every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years.

SEC. 43. If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or hindered; or whereby the lawful proceedings of any judge of election, or board of registration, or clerk or other officer of such election or challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment not less than thirty days nor more than one year.

SEC. 44. It shall be unlawful for any judge of election, clerk or person designated as provided in this act, or any person or persons within the polling place to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment not less than ten or more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars.

SEC. 45. It shall be the duty of such election commissioners to aid in the prosecution of all crimes and offenses against this act, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any law of the State concerning registration and election, and when, in the judgment of such election commissioners such offense has prob-

ably been committed, it shall be their duty to cause a prosecution to be instituted against such person.

SEC. 46. In all cities not within counties such election commissioners, deputy election commissioners, judges and clerks of
112 election and registration and clerks and assistants employed by the board of election commissioners shall be paid by the city. The members of said boards of election commissioners shall each receive a salary of $2,500 a year, and deputy election commissioner a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the election commissioners shall each receive a salary of $4.00 per day for the time actually employed, payable monthly. All office and other expenses incurred by said board of election commissioners, and all office and other expenses and all costs and expenses of registration and election in such cities shall be paid out of the city treasury. All printing, binding, books, stationery, etc., shall be paid for in the same manner and contracted for by the board of election commissioners.

SEC. 47. The act of a majority of such board of election commissioners shall in all cases arising under this act be considered as the act of said board of election commissioners.

SEC. 48. Said board of election commissioners shall audit all the claims of the judges of election and of registration and all other claims, expenses and accounts under this act, and shall draw a warrant therefor upon the proper officer.

SEC. 49. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled "An act to create a board of election commissioners, etc., approved May 31st, 1895," is hereby repealed.

113 RESPONDENT'S EXHIBIT "E."

(Engrossed.)

*House Bill No. 760.*

Fortieth General Assembly.

Introduced by Mr. Nesbit.

Read first time March 3, 1899, and 300 copies ordered printed.

Read second time March 7, 1899, and referred to the committee on elections.

Reported from the committee on elections with recommendation that the bill do pass with accompanying amendments March 24, 1899.

Taken up for engrossment and laid over informally April 8, 1899.

Taken up, amended; ordered engrossed and printed April 15, 1899.

500 copies ordered printed May 22, 1899.

C. ROACH, *Secretary.*

An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. In all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith.

SEC. 2. Within thirty days after this act becomes a law, the governor, by and with the advice and consent of the senate, shall appoint for each of such cities a board of election commissioners, to be composed of three (3) members, who shall hold their office for the term of four years, and until their successors are commissioned and qualified. One of said commissioners shall be a member of and belong to the leading party politically opposed to that to which the governor belongs. In making the appointment of commissioners, the governor shall designate the commissioner who shall be chairman of the board of election commissioners of such city. In case of vacancy for any cause in said board, the same shall be filled by the governor for the unexpired term until the assemblying of the next legislature, when the name of said commissioner shall be submitted to the senate by the governor for confirmation, as those of the other commissioners when appointed. Such commissioners shall be legal voters, residents of the State for at least five years and of such city for a like term and be of approved integrity and capacity; they shall
114 hold no other office, and shall be ineligible to any elective or appointive office during their term of office, and shall, before entering upon the duties of their said office take and subscribe an oath to support the Constitution of the United States and of this State, and to demean themselves faithfully in office, and each to give bond to the State in the sum of ten thousand dollars with securities to be approved by the governor, conditioned for the faithful and honest performance of the duties of his said office, and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the secretary of state. Said election commissioners shall make all necessary rules and regulations, not inconsistent with this act, with reference to the registration of voters and conduct of elections; and shall have charge of and make provisions for all elections, general, special, local, municipal, State and county and of all others of every description, to be held in such city or in any part thereof, at any time.

SEC. 3. Such election commissioners shall appoint and commission

one deputy election commissioner who shall hold his office during the pleasure of said commissioners, and shall be vested with all the powers and duties of the commissioners during their absence, sickness or inability to perform their duties; said deputy election commissioner shall also be the secretary of the board of election commissioners. Such commissioner shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said deputy election commissioner and employés shall be subject to the same restrictions and take and subscribe like oaths as said commissioners, and file the same in the office of the commissioners. Said election commissioners, deputy election commissioners and judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their several offices, and in the affairs and business thereof. Said board of election commissioners shall perform all the duties and take the place of the present board of election commissioners of such cities immediately after this act becomes a law. The offices and boards of election commissioners as now constituted and existing in such cities to which this act applies are hereby abolished, and the commissions of said election commissioners hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to the cities named herein, are hereby repealed.

SEC. 4. The office of such board of election commissioners shall be in the city hall of such city, and shall be kept open for the transaction of the duties and business of said office during business hours. Immediately after the appointment of said commissioners and upon the opening of such office, the officers or other custodians of said property shall, upon demand by said commissioners, turn over to them all books of registration, poll books, tally-sheets, ballot-boxes, form blanks, stationery and property of every description in their hands in any way relating to registration and elections, or connected therewith, in any manner. Said election commissioners shall purchase and provide all necessary ballot-boxes, and all books of registration, poll books, tally-sheets, ballots, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith; and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof.

SEC. 5. Said election commissioners and deputy election commissioner shall have the power and are hereby authorized to register any person or persons in said office of election commissioners, and re-register or transfer any person or persons, who may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except

such days as intervene between the completion of the registration herein provided and the next following election; a change of residence from one place in a precinct to another place or part thereof, shall not necessitate a re registration or transfer, or deprive the registered voter of his right to vote in said precinct. Such registration of voters shall be done in the same form and manner and in the same books as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration in such precincts.

SEC. 6. It is hereby made the duty of such board of election commissioners for such cities within six months after taking effect of this act, to divide such cities into election precincts regarding ward lines and composed of compact and contiguous territory, which shall contain as nearly as practicable, four hundred actual voters; and in making such division and establishing such precincts, such commissioner shall take as a basis the poll books of the number of votes cast at the last preceding presidential election. At least six months before each subsequent presidential election the election commissioners may revise and rearrange the precincts and increase or decrease their number on the basis of the votes cast at the previous presidential election for President making such precincts to contain, as near as practicable, four hundred voters, measured by the vote of such election. The precincts in each ward shall be numbered consecutively.

SEC. 7. After the said commissioners are appointed and qualified, they shall prepare for a new and general registration of voters for the next city election or State election, as the case may be, such registration shall be continued and revised as herein provided.

SEC. 8. Such board of election commissioners shall, at least
116 sixty days prior to the first city or State election after this act becomes a law, select and choose three electors as judges of election for each precinct in such city; they must be citizens of the United States, and entitled to vote in such precinct at the next election, must be men of good repute and character, be of good understanding and capable, they must reside in the ward in which the precinct for which they are selected to act is situated, and not hold any office or employment under the United States, the State of Missouri or city in which such election is held, and not be candidates for any office at the next ensuing election; two clerks of election for each precinct shall also be selected within the same time by the commissioners, who shall possess the same qualifications as the judges aforesaid. Before entering upon the duties of their offices, each judge and clerk, so appointed, shall take and subscribe to like oath as that taken and subscribed by the election commissioners, and file the same in the office of election commissioners. Said judges and clerks shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal elections in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said commis-

sioners shall make an appointment as herein provided to fill such vacancy. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks.

SEC. 9. Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day of registration, Tuesday, three weeks before such election. A new general registration shall be made in every year thereafter in which a presidential election occurs, and just prior thereto the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be provided and furnished to each board of registration by the said election commissioners for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the residence of such person shall appear in the first column. The register shall be ruled, and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such
117 dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor above that as the second or such other floor as it may be. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full. Under the column "nativity," the State, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence." the periods, by days, months or years, stated by the applicant in precinct, city and State. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention" the word "yes." Under the column "qualified voter," the word "yes," or "no," as the fact shall appear or be determined by the board of registry, it being, however, required of them to

designate as a qualified voter any male person who, if otherwise qualified, shall not, at the time of making application be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application" the month, day and year when the applicant presented himself and was adjudged a qualified voter in the election precinct. Under the column "signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is written for him.

SEC. 10. The judges of election aforesaid shall constitute the board of registration in the precinct for which they are appointed. In the registration of voters, said board of registration shall proceed as follows: They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this State; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry books and shall make the
118 entries therein required by this act, and one of the judges shall ask the questions as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said books. The name of every applicant shall be entered in such registry books, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same column, "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such

election precinct, he cannot vote therein, although otherwise qualified. At the end of the day's registration, each of said judges shall sign his name at the end of the list on each page of the registration book. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election, shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judges or clerk as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

SEC. 11. Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor an officer, soldier or marine in the regular
119 Army or Navy of the United States, nor while kept at any poor-house or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident.

SEC. 12. The election commissioners shall prepare and furnish to the board of registration in each precinct two blank books to be known as "verification lists," each page to be ruled into columns, and contain pages sufficient for each street, avenue and alley in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand page of such "verification lists," arranging them according to the street, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the pages of such "verification lists," headed "registered names," according to the street number as above indicated. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon such registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists," such board, or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges

shall, however, know that any person so complained of is a qualified voter and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists. Said board of registration shall before eight o'clock on the following day, return said "verification lists" to the office of such election commissioners.

SEC. 13. The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists," does not reside at the place designated thereby, they shall make a check-mark opposite such name. If, in making any such canvass, any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor, and be liable to a penalty not to exceed $50. In making such can-
120 vass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy shall be returned to the election commissioners. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock on either of said days, the election commissioner shall immediately appoint a clerk, of the same politics, in place of the one absent or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by imprisonment in the city jail for not less than one month nor more than one year.

SEC. 14. Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check-mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioners. A similar notice shall also be served by one of said canvassers, either at the time said canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he

be not found at the place designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than ten o'clock Friday morning of the week of such canvass. Any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor, punishable by imprisonment not less than one month nor more than one year. And it shall be the duty of said commissioners, when complaint is made to them, to investigate the action of such clerks or canvassers, and to cause them to be punished for such neglect of duty.

121 SEC. 15. On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the board of registration during that session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after, such examination and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes," under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall not appear and show cause why

his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registration to the office of the election commissioners. If any person, already registered, shall appear before said board at such session and makes oath that he has removed to another place in the same precinct, said board; if they believe him, shall not erase his name, but shall make the correction to his residence in the books of registration.

SEC. 16. Any voter or voters in the ward containing such precinct may make application in writing before said board of registra-
122 tion at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application, the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application, the board of registration conclude to erase the name they shall so note it on the register. Such person may appear before the board of election commissioners for the purpose of reinstating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward.

SEC. 17. At the end of the last session provided for, the said board of registration and said clerks shall compare and correct the registers aforesaid, and make them correspond and agree; and said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioners; thereupon the said commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address and arranged according to the streets, avenues, or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands; and upon application, a copy of the same shall be given to any person in such precinct. Said registers in the office of the election commissioners, shall be public records and open to public inspection.

SEC. 18. Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration shall appear in person and make application under oath, as in the case of the first registration herein provided. The same form and blanks and method of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the election commissioners in every subsequent registration, as is directed herein for the first registration and election following the same. If any

special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry.

SEC. 19. At every election held in such cities between the general registrations above referred to, the last general registry shall be used, and for that purpose the board of registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m. until 10 o'clock p. m., on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards
123 the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this act becomes a law and the next general registration provided for herein, the registry books of qualified voters in such cities at the last general city or State election, and used in said election as the registry of qualified voters of such cities, and the registry of qualified voters under section 5 of this act, together with the registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 9 of this act by said election commissioners for the registration required to be made in every presidential year by this act; and the registry and other books no longer required, or used, shall be kept and preserved in the office of the election commissioners.

SEC. 20. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application in writing and file the same with the election commissioners, to be heard and considered by the board of appeals, as in other cases provided.

SEC. 21. Said election commissioners shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a board of appeals, to hear such applications and appeals as shall be made to be placed upon the registry of voters of any particular precinct of persons who applied for registration and were refused by the board of registration, or had their names stricken from the registry by said board. Said board of appeals may also register as qualified voters, such persons as may make application, who failed to appear before the board of registration because of sickness, forgetfulness, absence from the city or other reasonable cause at the time of precinct registration.

SEC. 22. It shall be the duty of such election commissioners to give ten days' notice in two daily newspapers of such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot-box, poll books, verification

lists, and necessary blanks and stationery, packages of ballots and key to box, to one of said judges of election, at his residence in such precinct.

SEC. 23. The election polls shall be open at 6 o'clock in the morning and continued open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof.

If any judge or clerk shall not be present after the expira-
124 tion of fifteen minutes from the time to open the polls, or be disqualified or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall administer to such judge or clerk the oath required of the judge or clerk originally appointed, and such appointee perform like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be imprisoned not less than three months nor more than one year, or fined not less than $200 nor more than $1,000.

SEC. 24. Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by a judge that he protested against such obstruction of the view of the ballot-box, and was overruled by the majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct.

SEC. 25. Each of the clerks of the election shall keep a poll book which contains a column headed "number," another headed "residence," and another headed "names of voters." The name and street and number of the residence of such voter shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number."

SEC. 26. One of the said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of

the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll book, in the column headed "number," and another judge shall put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, marked
125 "voted," or the letter "V." If such person so registered shall be challenged or disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause of challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter.

SEC. 27. Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the order of such judge of election. At every registration and election, each of the political parties shall have a right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth as will enable him to see each person as he offers to register or vote, and who shall be protected, in the discharge of his duty by the judges of election. Two persons of each political party, represented on the ballot, of good character and standing, may be admitted, by the judges, into the polling place to be present during the canvass of the votes and the making of the returns.

SEC 28. As soon as the polls of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the votes. Such canvass shall not be adjourned or postponed until it shall be fully completed, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at such entrance to the room where such canvass is begun or about to take place, to exclude noisy or disorderly persons, and to keep the peace.

SEC. 29. The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll list do not agree after such rejection, they shall

reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioner; and the ballots or poll lists agreeing or being made to agree in this way, the board shall proceed to
126 count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are *on*, or supposed to be alike, and exclude from such files any which may have a name or an erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same name and count them by the tens, carefully examining each name of *of* each — said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner and call the names of the persons named in the ten ballots, and the offices for which they are designated, and the poll clerk- shall tally ten votes for each of such persons. When they shall have gone through such file of ballots containing the same name by tens in that way, and when the clerks shall have tallied all the votes by ten- for each of said persons, they shall then take up the next pile of ballots containing the same names, and shall count them by tens in the same way, and shall call the names of the persons named in the said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed, and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kinds of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the persons proper to be voted for on such ballots has been omitted or erased, usually called "scratch tickets." They shall be canvassed separately by the judges, and each name called out to the clerks and the office for which it is designated, and the clerks making tally of the same. When all ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the number, one of them shall announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name.

SECTION 30. Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of the candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile

containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges
127 shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks who shall tally the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the tally-sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such tally-sheets and returns the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition, and certify the same to the election commissioners, as provided herein in other cases.

SEC. 31. The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll books used at such election. Each of these statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, and the city in relation to which such statement shall be made, and the time of opening and closing of the polls in such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly written and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor in writing, and a copy thereof signed by himself shall be enclosed in an envelope which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened. And the envelope shall be directed on the outside to the election commissioners. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envelope, securely sealed and signed and directed on the outside of envelope to said election commissioners. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward.

SEC. 32. The poll books which contain the statement of returns

shall be placed in the ballot-box, and the ballot-box shall
128 then be locked and the key removed; whereupon, said judges of election shall all write their names upon a slip of paper of sufficient length for the following purposes: Said slip of paper, after the signing of their names thereon by the judges, shall then be pasted over the keyhole of the said box and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy such signatures written thereon, and when the key shall be inserted in the keyhole it will tear the paper so pasted over the keyhole. Such paper shall be fastened with some adhesive material and so as not to permit the removal of such slip of paper without defacing it.

SEC. 33. The judges shall fold in two folds and string closely upon a string or wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed, in writing or print, the number of the precinct, date on which such election was held and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective" or "objected" or "rejected," in such sealed package or envelope to the election commissioners. Two of said judges of opposite politics shall, immediately after signing the statement of the result of the canvass and tally-sheets and the sealing of the ballot-box, go to the office of the election commissioners and deliver said ballot-box and the key thereto to said election commissioners, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-boxes, said commissioners shall give a receipt therefor to said judges, and shall place them properly arranged in the order of precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioners shall securely keep said ballot-boxes for twelve months, nor opening nor inspecting them nor allowing any one else to do so, except upon order of court in case of contested election, or when it shall be necessary to produce them at the trial of an offense committed under this act. At the end of twelve months after said election, said ballots shall be destroyed: Provided, that if any contest of the election of any officer voted for at such election, or prosecution under this act shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined.

SEC. 34. Another judge shall take a statement of the votes cast into his possession sealed up in an envelope as aforesaid, and one of the clerks shall take a tally-sheet, sealed up in an envelope as afore-
129 said, and the judge having possession of statement and the clerk having possession of this sheet, shall each, before twelve o'clock of the next day after such election, deliver the state-

ment and tally-sheet to the said election commissioners, and take a receipt from them therefor. And it shall be the duty of the said election commissioners to receive the same, and to keep safely under lock and key until ordered to be surrendered as herein provided.

SEC. 35. The said election commissioners upon the receipt of said ballot-box and key thereto shall note the condition of seal or stamp on said box and enter the facts touching the same upon a book kept by them, together with the name of the judges who returns such ballot-box; he shall thereupon open said ballot-box and remove the poll books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerk taking ballots, ballot-boxes, statement, tally or poll books, to be delivered to the election commissioners, shall fail to deliver the same to said election commissioners within three hours after the close of the canvass of the vote as aforesaid, or shall fail or refuse to comply with the provisions of this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisonment not more than six months, or by both such fine and imprisonment.

SEC. 36. Within eight days after the close of — such board of election commissioners shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for governor and lieutenant governor on one sheet; all votes for other State officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of Congress and for senators and representatives to the General Assembly on another sheet; all votes for county officers on another sheet; all votes for city officers on another sheet; any other officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitted to a vote of the people on another sheet. It shall be the duty of such board of canvassers to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or result, and a certified copy thereof, shall be treated everywhere within the State, and by all public officers, with the same force and effect as the abstract of votes now authorized by the law of the State in such cases made and provided.

SEC. 37. The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application.

130 SEC. 38. If, upon opening the various returns so made, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges and clerks of any fraud in any respect touching such returns, it shall then be the duty

of the board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to cause such parties who were present at the time of such proclamation to come before them, and a subpœna may be issued by the election commissioner compelling any such witness to come before such board and give their evidence touching the matter; and it shall be the duty of said board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judges of election after the canvass by them in such precinct, the result, so declared, shall be binding and conclusive, except in case of election contests.

SEC. 39. Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts; or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, made in pursuance of this act, or otherwise as in this act provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration or register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious name, or any name of any person, except as provided in this act, upon conviction, shall be adjudged guilty of felony and punished — in the penitentiary not less than two years.

SEC. —. Any person who shall falsely personate an elector, or other person, and vote, or attempt or offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to
131 vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having voted once, shall vote, or attempt to vote again; or shall

knowingly, willfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by any such means induce, or attempt to induce, any such voter to exercise any such right, shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years.

SEC. 41. Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such election, or any false certificate or statement of the result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of felony, and be punished by imprisonment in the penitentiary not less than two years.

SEC. 42. If any person other than a judge of election, shall at any such election knowingly or willfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes; or if any judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, willfully or fraudulently put any ballot or other paper having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry, as herein provided or who shall be entitled to vote under this act; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; or shall remove any ballot or semblance thereof from, or add any ballot or sem-
132 blance thereof to the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed. Every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years.

SEC. 43. If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or hindered; or whereby the lawful proceedings of any judge of election, or board

of registration, or clerk or other officer of such election or challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment not less than thirty days nor more than one year.

SEC. 44. It shall be unlawful for any judge of election, clerk or person designated as provided in this act, or any person or persons within the polling place to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment not less than ten or more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars.

SEC. 45. It shall be the duty of such election commissioners to aid in the prosecution of all crimes and offenses against this act, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any law of the State concerning registration and election, and when, in the judgment of such election commissioners such offense has probably been committed, it shall be their duty to cause a prosecution to be instituted against such person.

SEC. 46. In all cities not within counties such election commissioners, deputy election commissioners, judges and clerks of election and registration and clerks and assistants employed by the board of election commissioners shall be paid by the city. The members of said boards of election commissioners shall each receive a salary of $2,500 a year, and deputy election commissioner a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the election commissioners shall each receive a salary of $4.00 per day for the time actually employed, payable monthly. All office and other expenses incurred by said board of election commissioners, and all office and other expenses and all costs and expenses of registration and election in such cities shall be paid out of the city treasury. All printing, binding, books, stationery, etc., shall be paid for in the same manner and contracted for by the board of election commissioners.

SEC. 47. The act of a majority of such board of election commissioners shall in all cases arising under this act be considered as the act of said board of election commissioners.

133 SEC. 48. Said board of election commissioners shall audit all the claims of the judges of election and of registration and all other claims, expenses and accounts under this act, and shall draw a warrant therefor upon the proper officer.

SEC. 49. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled, "An act to create a board of election commissioners, etc.," approved May 31st, 1895, is hereby repealed.

RESPONDENT'S EXHIBIT "F."

STATE OF MISSOURI, *ss:*

I, Alexander A. Lesueur, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of an act of the General Assembly of the State of Missouri entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19, 1899, as appears by comparing the same with the original roll of said act now on file, as the law directs, in this office.

In testimony whereof I hereunto set my hand and affix the great seal of the State of Missouri. Done at office, in the city of Jefferson, this twentieth day of June, A. D. 1899.

[SEAL.] A. A. LESUEUR,
*Secretary of State.*

*Elections in Cities of* 300,000 *Inhabitants or More.*

An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment, and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith.

SECTION 1. In all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith.

134 SEC. 2. Within thirty days after this act becomes a law, the governor, by and with the advice and consent of the senate, shall appoint for each of such cities a board of election commissioners, to be composed of three (3) members, who shall hold their office for the term of four years, and until their successors are commissioned and qualified. One of said commissioners shall be a member of and belong to the leading party politically opposed to that to which the governor belongs. In making the appointment of commissioners, the governor shall designate the commissioner

who shall be chairman of the board of election commissioners of such city. In case of vacancy for any cause in said board, the same shall be filled by the governor for the unexpired term until the assembling of the next legislature, when the name of said commissioner shall be submitted to the senate by the governor for confirmation, as those of the other commissioners when appointed. Such commissioners shall be legal voters, residents of the State for at least five years and of such city for a like term and be of approved integrity and capacity; they shall hold no other office, and shall be ineligible to any elective or appointive office during their term of office, and shall, before entering upon the duties of their said office, take and subscribe an oath to support the Constitution of the United States and of this State, and to demean themselves faithfully in office, and each to give bond to the State in the sum of ten thousand dollars with securities to be approved by the governor, conditioned for the faithful and honest performance of the duties of his said office, and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the secretary of state. Said election commissioners shall make all necessary rules and regulations, not inconsistent with this act, with reference to the registration of voters and conduct of elections; and shall have charge and make provisions for all elections, general, special, local, municipal, State and county and of all others of every description, to be held in such city or in any part thereof, at any time.

SEC. 3. Such election commissioners shall appoint and commission one deputy election commissioner who shall hold his office during the pleasure of said commissioners, and shall be vested with all the powers and duties of the commissioners during their absence, sickness or inability to perform their duties; said deputy election commissioner shall also be the secretary of the board of election commissioners. Such commissioner shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said deputy election commissioner and employés shall be subject to the same restrictions and take and subscribe like oaths as said commissioners, and file the same in the office of the commissioner. Said election commissioners, deputy election commissioner and judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their several offices, and in the affairs and business thereof. Said board of election commissioners shall perform all the duties and take the place of the present board of election commissioners of such cities immediately after this act
135 becomes a law. The offices and boards of election commissioners as now constituted and existing in such cities to which this act applies, are hereby abolished, and the commissions of such election commissioners hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to the cities named herein, are hereby repealed.

SEC. 4. The office of such board of election commissioners shall be in the city hall of such city, and shall be kept open for

the transaction of the duties and business of said office during business hours. Immediately after the appointment of said commissioners and upon the opening of such office, the officers or other custodians of said property shall, upon demand by said commissioners, turn over to them all books of registration, poll books, tally-sheets, ballot-boxes, form blanks, stationery and property of every description in their hands in any way relating to registration and elections, or connected therewith, in any manner. Said election commissioners shall purchase and provide all necessary ballot-boxes, and all books of registration, poll books, tally-sheets, ballots, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith; and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof.

SEC. 5. Said election commissioners and deputy election commissioner shall have the power and are hereby authorized to register any person or persons in said office of election commissioners, and re-register or transfer any person or persons, who may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except such days as intervene between the completion of the registration herein provided and the next following election; a change of residence from one place in a precinct to another place or part thereof, shall not necessitate a re-registration or transfer, or deprive the registered voter of his right to vote in said precinct. Such registration of voters shall be done in the same form and manner and in the same book as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration in such precincts.

SEC. 6. It is hereby made the duty of such board of election commissioners for such cities within six months after taking effect of this act, to divide such cities into election precincts regarding ward lines and composed of compact and contiguous territory, which shall contain as nearly as practicable, four hundred actual voters; and in making such division and establishing such precincts, such commissioner shall take as a basis the poll books of the number of votes cast at the last preceding presidential election. At least six months before each subsequent presidential election the election commissioners may revise and rearrange the precincts and increase or decrease their number on the basis of the votes cast at the previous presidential election for President, making such precincts to contain, as near as practicable, four hundred voters, measured by the vote of such election. The precincts in each ward shall be numbered consecutively.

SEC. 7. After the said commissioners are appointed and qualified, they shall prepare for a new and general registration of voters

for the next city election or State election, as the case may be; such registration shall be continued and revised as herein provided.

SEC. 8. Such board of election commissioners shall, at least sixty days prior to the first city or State election after this act becomes a law, select and choose four electors as judges of election for each precinct in such city: they must be citizens of the United States, and entitled to vote in such precinct at the next election, must be men of
136 good repute and character, be of good understanding and capable, they must reside in the ward in which the precinct for which they are selected to act is situated, and not hold any office or employment under the United States, the State of Missouri or the city in which such election is held, and not be candidates for any office at the next ensuing election; two clerks of election for each precinct shall also be selected within the same time by such commissioners, who shall possess the same qualifications as the judges aforesaid. Before entering upon the duties of their offices, each judges and clerk, so appointed, shall take and subscribe to like oath as that taken and subscribed by the election commissioners, and file the same in the office of election commissioners. Said judges and clerks shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal elections in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said commissioners shall make an appointment as herein provided to fill such vacancy. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks.

SEC. 9. Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day of registration, Tuesday, three weeks before such election. A new general registration shall be made in every year thereafter in which a presidential election occurs, and just prior thereto the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be provided and furnished to each board of registration by the said election commissioners for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the residence of such person shall appear in the first column. The register shall be ruled and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such dwelling as shall enable it

to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor above that as the second or such other floor as it may be. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full. Under the column "nativity," the State, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence," the periods, by days, months, or years, stated by the applicant in precinct, city and State. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant
137 be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention" the word "yes." Under the column "qualified voter," the word "yes" or "no," as the fact shall appear or be determined by the board of registry, it being, however, required of them to designated as a qualified voter any male person who, if otherwise qualified, shall not, at the time of making application, be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application," the month, day and year when the applicant presented himself and was adjudged a qualified voter in the election precinct. Under the column "signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is written for him.

SEC. 10. The judges of election aforesaid shall constitute the board of registry in the precinct for which they are appointed. In the registry of voters, said board of registration shall proceed as follows: They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this State; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry book

and shall make the entries therein required by this act, and one of the judges shall ask the question as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said books. The name of every applicant shall be entered in such registry books, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same column, "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although otherwise qualified. At the end of the day's registration, each of said judges shall sign his name at the end of the list on each page of the registration book. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election,
shall be filled by the judge or judges present, and the same
138 oath shall be administered by one of the judges present to
such judge or clerk as provided for regular judges and clerks.
The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

SEC. 11. Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor any officer, soldier or marine in the regular Army or Navy of the United States, nor while kept at any poor-house or other asylum at public expense, nor while confined

in any public prison, shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident.

SEC. 12. The election commissioners shall prepare and furnish to the board of registration in each precinct two blank books to be known as "verification lists," each page to be ruled into columns, and contain pages sufficient for each street, avenue and alley in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand pages of such "verification lists," arranging them according to the street-, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the pages of such "verification lists," headed (*and*) "registered names," according to the street number as above indicated. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon such registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists," such board, or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter, and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists Said board of registration shall, before eight o'clock on the following day, return said "verification lists" to the office of such election commissioners.

SEC. 13. The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling-place or each house where any one may reside in such precinct, and each dwelling-place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists" does not reside at the place designated thereby, they shall make a check-mark opposite such name. If, in making any such canvass any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor, and be liable to a penalty not to exceed $50. In making
139 such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third

copy shall be returned to the election commissioners. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock, on either of said days, the election commissioner shall immediately appoint a clerk of the same politics, in place of the one absent, or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by imprisonment for not less than one month nor more than one year.

SEC. 14. Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check-mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioners. A similar notice shall also be served by one of said canvassers, either at the time said canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he be not found, at the place designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than 10 o'clock Friday morning of the week of such canvass. Any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor, punishable by imprisonment not less than one month nor more than one year. And it shall be the duty of said commissioners, when complaint is made to them, to investigate the action of such clerks or canvassers, and to cause them to be punished for such neglect of duty.

SEC. 15. On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties

at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the board of registration during that session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after, such examination and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes" under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall not appear and show cause why his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registration to the office of the election commissioners. If any person, already registered, shall appear before said board at such session and make oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase his name, but shall make the correction to his residence in the books of registration.

SEC. 16. Any voter or voters in the ward containing such precinct may make application in writing before said board of registration at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application, the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application, the board of registration conclude to erase the name they shall so note it on the register. Such person may appear before the board of election commissioners for the purpose of reinstating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward.

SEC. 17. At the end of the last session provided for, the said board of registration and said clerks shall compare and correct the regis-

ters aforesaid, and make them correspond and agree; and said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioners; thereupon the said commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address, and arranged according to the streets, avenues or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands; and upon application, a copy of the same shall be given to any person in such precinct. Said registers in the office of the election commissioners, shall be public records and open to public inspection.

SEC. 18. Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration, shall appear in person and make application, under oath, as in the case of the first registration herein provided. The same form and blanks and methods of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of
141 election and election clerks, and by the election commissioners in every subsequent registration, as is directed herein for the first registration and election following the same. If any special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry.

SEC. 19. At every election held in such cities between the general registrations above referred to, the last general registry shall be used, and for that purpose the board of registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m., until 10 o'clock p. m., on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this act becomes a law and the next general registration provided for herein, the registry books of qualified voters in such cities at the last general city or State election, and used in said election as the registry of qualified voters of such cities, and the registry of qualified voters under section 5 of this act, together with the registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 9 of this act by said election commissioner for the registration required to be made in every presidential year by this act; and the registry

and other books no longer required, or used, shall be kept and preserved in the office of the election commissioners.

SEC. 20. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application, in writing, and file the same with the election commissioners, to be heard and considered by the board of appeals, as in other cases provided.

SEC. 21. Said election commissioners shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a board of appeals, to hear such application and appeals as shall be made to be placed upon the registry of voters of any particular precinct, of persons who applied for registration and were refused by the board of registration, or had their names stricken from the registry by said board. Said board of appeals may also register as qualified voters, such persons as may make application, who failed to appear before the board of registration because of sickness, forgetfulness, absence from the city or other reasonable cause, at the time of precinct registration.

SEC. 22. It shall be the duty of such election commissioners to give ten days' notice in two daily newspapers of such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot-box, poll books, verification lists, and necessary blanks and stationery, packages of ballots and key to box to one of said judges of election, at his residence in such precinct.

SEC. 23. The election polls shall be open at 6 o'clock in the morning and continue open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof. If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified, or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall administer to such judge or clerk the oath required of the judge or clerk
142 originally appointed, and such appointee perform like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be impris-

oned not less than three months nor more than one year, or fined not less than $200 nor more than $1,000.

SEC. 24. Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by a judge that he protested against such obstruction of the view of the ballot-box, and was overruled, by a majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct.

SEC. 25. Each of the clerks of the election shall keep a poll book which contains a column headed "number," another headed "residence," and another headed "names of voters." The name and street and number of the residence of such voter shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number."

SEC. 26. One of the said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll book, in the column headed "number," and another judge shall put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, mark "voted," or the letter "V." If such person so registered shall be challenged or disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause of challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter.

SEC. 27. Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the

order of such judges of election. At every registration and election, each of the political parties shall have the right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth, as will enable him to see each
143 person as he offers to register or vote, and who shall be protected, in the discharge of his duty, by the judges of election. Two persons of each political party, represented on the ballot, of good character and standing, may be admitted, by the judges, into the polling place to be present during the canvass of the votes and the making of the returns.

SEC. 28. As soon as the poll of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the votes. Such canvass shall not be adjourned or postponed until it shall be fully completed, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at such entrance to the room where such canvass is begun or about to take place, to exclude noisy or disorderly persons, and to keep the peace.

SEC. 29. The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll list do not agree after such rejection, they shall reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioners; and the ballots or poll lists agreeing or being made to agree in this way, the board shall proceed to count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are on, or supposed to be alike, and exclude from such files any which may have a name or any erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same name and count them by the tens, carefully examining each name of each of said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner, and call the names of the persons named in the ten ballots, and the offices for which they are designated, and the poll clerks shall tally ten votes for each of such persons. When they shall have gone through such file of ballots containing the same name by tens in that way, and when the clerks shall have tallied all the votes by ten for each of said persons, they shall then take up the next pile of ballots containing the same names, and shall count them by tens in the same way, and shall

call the names of the persons named in said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed, and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kind of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the persons proper to be voted for on such ballots had been omitted or erased, usually called "scratched tickets." They shall be canvassed separately by the judges, and each name called out to the clerks and the office for which it is designated, and the clerks making tally of the same. When all ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the number, one of them shall announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name.

144 SEC. 30. Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks, who shall tally the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the tally-sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such tally-sheets and returns the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition, and certify the same to the election commissioners, as provided herein in other cases.

SEC. 31. The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll books used at such election. Each of these statements shall contain a caption

stating the day on which, and the number of the election precinct and the ward, and city in relation to which such statement shall be made, and the time of opening and closing of the polls of such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly written and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor, in writing, and a copy thereof signed by himself shall be enclosed in an envelope, which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened. And the envelope shall be directed on the outside to the election commissioners. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envelope, securely sealed and signed and directed on the outside of envelope to said election commissioners. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward.

SEC. 32. The poll books which contain the statement of returns shall be placed in the ballot-box and the ballot-box shall then be locked and the key removed; whereupon, said judges of election shall all write their names upon a slip of paper of sufficient length for the following purposes: Said slip of paper, after the signing of their names thereon by said judges, shall then be pasted over the keyhole of the said box and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy the signatures written thereon, and when the key shall be inserted in the keyhole it will tear the paper so pasted over the keyhole. Such paper shall be fastened with some adhesive material and so as not to permit the removal of such slip of paper without defacing it.

SEC. 33. The judges shall fold in two folds and string closely upon a string or wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed, in writing or print, the number of the precinct, date on which such election was held, and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective," or "objected," or "rejected," in such sealed

package or envelope to the election commissioners and deliver said ballot-box and the key thereto immediately after signing the statement of the result of the canvass and tally-sheets and the sealing of the ballot-box, go to the office of the election commissioners and delivere said ballot-box and the key thereto to said election commissioners, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-boxes, said commissioners shall give a receipt therefor to said judges, and shall place them properly arranged in the order of precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioners shall securely keep said ballot-boxes for twelve months, not opening or inspecting them nor allowing any one else to do so, except upon order of court in case of contested election, or when it shall be necessary to produce them at the trial of an offense committed under this act. At the end of twelve months after said election, said ballots shall be destroyed: Provided, that if any contest of the election of any officer voted for at such election, or prosecution under this act shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined.

SEC. 34. Another judge shall take a statement of the votes cast into his possession, sealed up in an envelope as aforesaid, and one of the clerks shall take a tally-sheet, sealed up in an envelope as aforesaid, and the judge having possession of statement and the clerk having possession of tally-sheet, shall each, before twelve o'clock of the next day after such election, deliver the statement and tally-sheet to the said election commissioners, and take a receipt from them therefor. And it shall be the duty of the said election commissioners to receive the same, and to keep, safely under lock and key until ordered to be surrendered as herein provided.

SEC. 35. The said election commissioners, upon the receipt of said ballot-box and key thereto, shall note the condition of seal or stamp on said box, and enter the fact touching the same upon a book kept by him, together with the name of the judge who returns such ballot box; he shall thereupon open said ballot-box and remove the poll books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerks taking ballots, ballot-boxes, statement, tally or poll books, to be delivered to the election commissioners, shall fail to deliver the same to said election commissioners within three hours after the close of the canvass of the votes as aforesaid, or shall fail or refuse to comply with the provisions of this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisonment not more than six months, or by both such fine and imprisonment.

SEC. 36. Within eight days after the close of such election such board of election commissioners shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for

governor and lieutenant governor on one sheet; all votes for
146 other State officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of Congress and for senators and representatives to the General Assembly on another sheet; all votes for county officers on another sheet; all votes for city officers on another sheet; all votes for any other officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitted to a vote of the people on another sheet. It shall be the duty of such board to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or results, and a certified copy thereof, shall be treated everywhere within the State, and by all public officers, with the same force and effect as the abstract of votes now authorized by the laws of the State in such cases made and provided.

SEC. 37. The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application.

SEC. 38. If, upon opening the various returns so made, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges and clerks of any fraud in any respect touching such returns, it shall then be the duty of the board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to call such parties who were present at the time of such proclamation to come before them, and a subpœna may be issued by the election commissioners compelling any such witness to come before such board and give their evidence touching the matter; and it shall be the duty of said board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judges of election after the canvass by them in such precinct, the result so declared, shall be binding and conclusive, except in case of election contests.

SEC. 39. Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts;

or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, made in pursuance of this act, or otherwise as in this act provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious
147 name, or any name of any person, except as provided in this act, upon conviction, shall be adjudged guilty of felony and punished — in the penitentiary not less than two years.

SEC. 40. Any person who shall falsely personate any elector, or other person, and vote, or attempt to offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having once voted, shall vote, or attempt to vote again; or shall knowingly, willfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by any such means induce, or attempt to induce, any such voter to exercise any such right, shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years.

SEC. 41. Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such election, or any false certificate or statement of the result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of a felony, and be punished by imprisonment in the penitentiary not less than two years.

SEC. 42. If any person other than a judge of election, shall at any such election knowingly or willfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, into

any box used at such election for the reception of votes; or if any judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, willfully or frauduently put any ballot or other paper having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry as herein provided, or who shall be entitled to vote under this act; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; or shall remove any ballot or semblance thereof from, or add any ballot or semblance thereof to, the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed. Every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years.

SEC. 43. If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or
148 hindered; or whereby the lawful proceedings of any judge of election, or board of registration, or clerk or other officer of such election or challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment not less than thirty days nor more than one year.

SEC. 44. It shall be unlawful for any judge of election, clerk or person designated as provided in this act, or any person or persons within the polling place, to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment not less than ten nor more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars.

SEC. 45. It shall be the duty of such election commissioners to aid in the prosecution of all crimes and offenses against this act, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any law of the State concerning registration and election and when, in the judgment of such election commissioners such offense has probably been committed, it shall be their duty to cause a prosecution to be instituted against such person.

SEC. 46. In all cities not within counties such election commissioners, deputy election commissioners, judges and clerks of election and registration and clerks and assistants employed by the board of election commissioners, shall be paid by the city. The

members of said board of election commissioners shall each receive a salary of $2,500 a year, and deputy election commissioner a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the election commissioners shall each receive a salary of $4.00 per day for the time actually employed, payable monthly. All office and other expenses incurred by said board of election commissioners, and all office and other expenses and all costs and expenses of registration and election in such cities shall be paid out of the city treasury. All printing, binding, books, stationery, etc., shall be paid for in the same manner and contracted for by the board of election commissioners.

SEC. 47. The act of a majority of such board of election commissioners shall in all cases arising under this act be considered as the act of said board of election commissioners.

SEC. 48. Said board of election commissioners shall audit all the claims of the judges of election and of registration and all other claims, expenses and accounts under this act, and shall draw a warrant therefor upon the proper officer.

SEC. 49. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act, entitled "An act to create board of election commissioners, etc., approved May 31st, 1895, is hereby repealed."

Approved June 19, 1899.

149 RESPONDENT'S EXHIBIT "C."

STATE OF MISSOURI, *ss:*

I, Alexander A. Lesueur, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the journal of the senate of the Fortieth General Assembly of the State of Missouri so far as it relates to house bill No. 760, as the same appears on file in this office.

In testimony whereof, I hereunto set my hand and affix the great seal of the State of Missouri. Done at office in the city of Jefferson, this 12th day of October, 1899.

[SEAL.] A. A. LESUEUR,
*Secretary of State,*
By T. W. PARK,
*Chief Clerk.*

*Journal of the Senate.*

Seventy-seventh day—Friday, April 21, 1899.

The following message was received from the house of representatives, through its assistant chief clerk, Mr. Slater,

Which was read:

Mr. President: I am instructed by the house to inform the senate that there has been introduced into and passed by the house, house bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred

thousand inhabitants or more; to create the office of election commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and election therein."

Title amended.

In which the concurrence of the senate is respectfully requested.

SLATER,
*Assistant Chief Clerk.*

On motion of Senator Morton the senate adjourned until three o'clock p. m., Monday next.

Seventy-eighth day—Monday, April 24, 1899.

House bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

Was taken up and read first time.

On motion of Senator Vandiver, the senate adjourned under the rules.

Seventy-ninth day—Tuesday, April 25, 1899.

*Afternoon Session.*

House bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations gov-rning registration and elections therein."

Was taken up, read second time and referred to committee on privileges and elections.

On motion of Senator Miller, the senate adjourned under the rules.

150 One hundredth day—Saturday, May 20, 1899.

Senate met pursuant to adjournment.

President, *pro tem.*, McClintic in the chair.

A quorum present.

Prayer by the chaplain.

Roll was called and the following-named senators responded to their names:

Present—Senators

| | | | |
|---|---|---|---|
| Anderson, | Farris, | Matthews, | Schweickardt, |
| Burkhead, | Fields, | Miller, | Tandy, |
| Childers, | Haynes, | Morton, | Thomas, |
| Cooper, | Hohenschild, | Mott, | Vandiver, |
| Dowell, | McClintic, | Ramp, | Whaley, |
| Drabelle, | Major, | Rollins, | Young—26. |
| Drum, | Martin, | | |

Absent—Senators

| | | | |
|---|---|---|---|
| Busche, | Davisson, | Marshall, | Walker, |
| Clay, | Lyons, | Orchard, | Wilson—8. |

Journal of yesterday read and approved.

Senator Haynes, from the committee on privileges and elections, submitted the following reports, which were read (among others):

Mr. President: Your committee on privileges and elections, to which was referred house bill No. 760, entitled:

An act to provide for the registration of voters, etc., in cities now having or which hereafter may have 300,000 inhabitants or more.

Begs leave to report that it has examined the same and recommends, by a majority vote, that it do not pass, and a majority of the committee are of the opinion, as heretofore reported, that the same cannot be considered, because of the Morton resolution.

Respectfully submitted.

W. H. HAYNES, *Chairman.*

On motion of Senator Morton, house bill No. 760, entitled:

An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern election in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,

Was taken up for third reading.

Senator Busche moved to make consideration of house bill No. 760 special order for 2 o'clock p. m.

Roll was called, and the motion was lost by the following vote:

Ayes—Senators

| | | | |
|---|---|---|---|
| Burkhead, | Haynes, | Mott, | Schweickardt, |
| Busche, | Martin, | Ramp, | Thomas—11. |
| Davisson, | Matthews, | Rollins, | |

Noes—Senators

| | | | |
|---|---|---|---|
| Childers, | Drum, | Marshall, | Vandiver, |
| Clay, | Farris, | Miller, | Whaley, |
| Cooper, | Fields, | Morton, | Wilson, |
| Dowell, | McClintic, | Orchard, | Young—19. |
| Drabelle, | Major, | Tandy, | |

Absent—Senators

| | | | |
|---|---|---|---|
| Anderson, | Hohenschild, | Lyons, | Walker—4. |

Senator Busche raised point of order that the bill could not be considered because the printed copies were not correct.

The point of order was not sustained.

Senator Schweickhardt raises a point of order that the bill must lay over under the rules.

Senator Morton moved that the rules be suspended and house bill No. 760 be read third time and put upon its passage.

151 Senator moved to take a recess until 2 o'clock p. m. Motion lost.

Senator Rollins moved to take a recess until 10 o'clock p. m.

Division was called and motion lost by the following vote:

Ayes, 12; noes, 18.

The question recurring upon the suspension of the rules, roll was called and the motion prevailed by the following vote:

Ayes—Senators

| | | | |
|---|---|---|---|
| Anderson, | Drum, | Major, | Vandiver, |
| Childers, | Farris, | Marshall, | Whaley, |
| Clay, | Haynes, | Miller, | Wilson, |
| Cooper, | Hohenschild, | Morton, | Young—23. |
| Dowell, | Lyons, | Orchard, | |
| Drabelle, | McClintic, | Tandy, | |

Noes—Senators

| | | | |
|---|---|---|---|
| Burkhead, | Martin, | Mott, | Rollins, |
| Busche, | Matthews, | Ramp; | Schweickhardt |
| Davisson, | | | —9 |

Absent—Senators

| | |
|---|---|
| Thomas, | Walker—2. |

The question recurring upon the motion of Senator Morton that house bill No. 760 be read third time and placed on its passage.

Senator Busche offered amendment No. 1, and moved its adoption; said amendment being a copy of senate bill No. 257;

Which was read first and second times.

Senator Haynes moved that all debate on the question be closed at 2.30 p. m., and a vote taken on all pending amendments and the bill.

The hour 2.30 having arrived, the question recurring upon the adoption of senate amendment No. 1 to house bill No. 760.

The amendment was lost.

The question recurring on the motion to place house bill No. 760 on third reading and passage.

The motion prevailed.

The roll was called and house bill No. 760 was passed by the following vote:

Ayes—Senators

| | | | |
|---|---|---|---|
| Childers, | Farris, | Marshall, | Thomas, |
| Clay, | Fields, | Miller, | Vandiver, |
| Cooper, | Haynes, | Morton, | Whaley, |
| Dowell, | Hohenschild, | Orchard, | Wilson, |
| Drabelle, | McClintic, | Tandy, | Young—22. |
| Drum, | Major, | | |

No—Senator Mott—1.

Absent—Senators

| | | | |
|---|---|---|---|
| Anderson, | Davisson, | Matthews, | Rollins, |
| Burkhead, | Lyons, | Ramp, | Schweickhardt |
| Busche, | Martin, | | —10. |

Absent with leave—Senator Walker—1.

The president declared the bill passed.

The title of the bill, as amended, was read and agreed to.

Senator Farris moved to reconsider the vote by which the bill passed.

Senator Fields moved to lay that motion on the table.

The latter motion prevailed.

On motion of Senator Farris, the senate took a recess until 7.30 p. m.

152 One hundred and first day—Monday, May 22, 1899.

Senate met pursuant to adjournment.

President, *pro tem.*, McClintic in the chair.

A quorum present.

Prayer by Chaplain Bradley.

Roll was called and the following-named senators responded to their names:

Present—Senators

| | | | |
|---|---|---|---|
| Anderson, | Farris, | Miller, | Tandy, |
| Burkhead, | Fields, | Morton, | Thomas, |
| Busche, | Haynes, | Mott, | Vandiver, |
| Childers, | Hohenschild, | Orchard, | Walker, |
| Cooper, | McClintic, | Ramp, | Whaley, |
| Dowell, | Major, | Rollins, | Wilson, |
| Drabelle, | Marshall, | Schweickardt, | Young—30. |
| Drum, | Martin, | | |

Absent—Senators

| | |
|---|---|
| Lyons, | Matthews—2. |

Absent with leave—Senators

| | |
|---|---|
| Clay, | Davisson—2. |

Journal of Saturday was read.

Senator Mott objected to the approval of the journal.

Senator moved that the journal be corrected to show that Senator Mott did not vote on house bill No. 760.

The motion prevailed.

Senator Schweickardt moved that the record be corrected to show that Senator Davisson had the floor when Senator Haynes made motion to close debate and that protest be sent to the Secretary's desk, be filed and made a part of the record of Saturday.

Senator Drabelle moved as a substitute that the journal be approved and moved the previous question.

Roll was called and the previous question prevailed by the following vote:

Ayes—Senators

| | | | |
|---|---|---|---|
| Anderson, | Drum, | McClintic, | Thomas, |
| Childers, | Farris, | Major, | Vandiver, |
| Cooper, | Fields, | Morton, | Whaley, |
| Dowell, | Haynes, | Orchard, | Wilson, |
| Drabelle, | Hohenschild, | Tandy, | Young—20. |

Noes—Senators

| | | | |
|---|---|---|---|
| Burkhead, | Marshall, | Miller, | Rollins, |
| Busche, | Martin, | Mott, | Schweickhardt |
| Lyons, | Matthews, | Ramp, | —11. |

Absent—Senator Walker—1.

Absent with leave—Senators

Clay, Davisson—2.

Roll was called and motion to approve journal prevailed by the following vote:

Ayes—Senators

| | | | |
|---|---|---|---|
| Anderson, | Major, | Marshall, | Vandiver, |
| Drum, | Farris, | Miller, | Walker, |
| Childers, | Fields, | Morton, | Whaley, |
| Cooper, | Haynes, | Orchard, | Wilson, |
| Dowell, | Hohenschild, | Tandy, | Young—23. |
| Drabelle, | McClintic, | Thomas, | |

Noes—Senators

| | | | |
|---|---|---|---|
| Burkhead, | Lyons, | Mott, | Rollins, |
| Busche, | Martin, | Ramp, | Schweickhardt |
| | | | —8. |

153 Absent—Senators

Clay, Davisson, Matthews—3.

The president announced the reception from the house of representatives — enrolled house bill No. 760.

An act to provide for the registration of voters in cities now hav-

g or which hereafter may have three hundred thousand inhabitants more; to create the office of election commissioner, provide for s appointment and define his duties; to govern elections in such ities, defining offenses and providing penalties therefor, and to escribe rules and regulations governing registration and elections erein.

The same had passed both branches of the General Assembly; at all other business would be suspended and the bill read at length; at unless objection be made *be* would sign the same, to the end at it become a law, and directed the secretary to read the bill. he bill was read at length by the secretary.

Senator Schweickhardt entered verbal protest to the *sing*ing of ie bill.

The roll was called on the protest and the protest was not sus-ained by the following vote:

Ayes—Senators

| | | | |
|---|---|---|---|
| Burkhead, | Martin, | Mott, | Rollins, |
| Busche, | Matthews, | Ramp, | Schweickhardt —8. |

Noes—Senators

| | | | |
|---|---|---|---|
| Anderson, | Farris, | Miller, | Vandiver, |
| Childers, | Fields, | Morton, | Walker, |
| Coopers, | Haynes, | Orchard, | Whaley, |
| Dowell, | Hohenschild, | Tandy, | Wilson, |
| Drabelle, | McClintic, | Thomas, | Young—22. |
| Drum, | Marshall, | | |

Absent—Senators

| | | | |
|---|---|---|---|
| Clay, | Davisson, | Lyons, | Major—4. |

Senator Schweickhardt entered written protest against the signing of house bill No. 760 which was attached to the bill.

Whereupon the presiding officer in the presence of the senate in open session and no other business intervening, affixed his signature thereto, and the bill was immediately returned to the house.

RESPONDENT'S EXHIBIT "D."

*Abstract of House Journal.*

Friday, March 3rd, page 513.—Mr. Nesbitt introduced house bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," which was read first time.

Tuesday, March 7th, page 547.—House bill No. 760 was taken up, read second time and referred to committee on elections.

Friday, March 24th, page 760.—Mr. Cardwell, from committee on elections, submitted the following reports:

Mr. SPEAKER: Your committee on elections, to which was referred house bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner, to provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," beg leave to
154 report that it has examined the same and recommends that it do pass with the following amendments:

Committee amendment No. 1:

Amend house bill No. 760 by inserting in line 8 of section 22, and after the word "box," the words "to one of said judges."

Committee amendment No. 2:

Amend section 8 of house bill No. 760 by striking out the word "three" in third line of the original and printed bills, and insert in lieu thereof the word "four," and by striking out the word "one," where it occurs in line 27 of original bill, and in line 25 of printed bill, the word "two."

Committee amendment No. 3:

Amend section 9 in printed bill by inserting after the word "registration," in line 4, the words "of voters in the precinct, and the second day of such registration."

Committee amendment No. 4:

Amend section 8 printed bill, line 2, by inserting the word "held," after the word "election," in said line 8.

Committee amendment No. 5:

Insert after and following section two (2) "said election commissioner shall not take part or participate in the nomination of any candidate for office, or in any party convention for the selection of delegates to any convention, or the nomination of candidates for office;"

Which were read.

Friday, April 6th, page 931.—Mr. Kneisley, from the special-calendar committee, submitted the following report:

Mr. SPEAKER: Your special-calendar committee begs leave to make the following report: House bills for engrossment—533, 590, 401; substitutes, 611, 525, 610, 440, 662, 671, 760, 664, 724.

Saturday, April 8th, page 966.—House bill No. 760 was taken up for engrossment and laid over informally.

Thursday, April 13th, page 1014.—Mr. Kneisley, from calendar committee, submitted the following report:

Mr. SPEAKER: Your calendar committee begs leave to make the following report:

House bills for engrossment—Nos. 644, 769; substitute, 841. Laid over informally—Nos. 234, 266, 351, 190, 281, 184, 186, 280, 211, 457; joint and concurrent resolution No. 6; 305, 365, 366, 403; substitutes 232, 197, 198, 723, 638, 744, 243, 683, 167, 668, 590, 525, 610, 671, 760, 708, 440, 839.

Saturday, April 15th, page 1042.—Mr. Nesbitt called up house bill No. 760 for engrossment. House bill No. 760 was taken up for engrossment. Mr. Charles A. Smith, of St. Louis, moved to lay bill over informally; which was lost. House bill No. 760 was taken up for engrossment. Mr. Hawkins offered the following amendment: Amend house bill No. 760 by striking out all of said bill after the enacting clause, and inserting the following in lieu thereof. (The amendment offered by Mr. Hawkins is set out in full in the journal, but, as it constitutes the bill as passed and embodied in the act of 1899, we do not copy it here.) Mr. James called for the reading in full of the amendment offered by Mr. Hawkins.

Mr. Williams moved to dispense with the further reading of the amendment; which was carried by the following vote: (here follows the names of 47 members voting aye, and 32 members voting no, with 29 members recorded as absent, and the names of 27 members absent with leave, and 5 members reported sick.)

Mr. Sickles moved to adjourn; which was lost. Mr. Jones, of Howell, moved to lay house bill No. 760 over informally. Messrs. Young and Jones, of Howell, demanding the ayes and noes, the motion to lay house bill No. 760 over informally, was lost by the following vote: (here the journal records the names of 28 members voting aye, and 50 members voting no; with 30 members
155 absent, and 27 members absent with leave, and 5 members reported sick.) Mr. Barrett moved the previous question; which was carried. Question being on the adoption of the amendment offered by Mr. Hawkins.

Mr. O'Fallon and Harrison demanded the ayes and noes with the following result: (Here the journal records the names of 51 members voting aye, 7 members voting no, 50 members absent and 27 members absent with leave, 5 reported sick).

From the vote it appeared that there was no quorum present. Mr. Kneisley moved a call of the house which was carried. Mr. Hall, of Saline, moved to enter the names of Messrs. Charles A. Smith, of St. Louis, Pickler and Sullivan, their presence being proven; which was carried. Mr. Hall, of Saline, moved to enter the names of Messrs. Thelineus, Mackenson, Wilson, of St. Louis; Tubbs and James as present; which was carried. (The journal here records the names of 73 members present, and 35 members absent, absent with leave 27 members, 5 reported sick.) The roll disclosing a quorum, all further proceedings, under the call of the house, were dispensed with. Mr. Pickler moved to adjourn; which was lost. The question being on the adoption of the amendment offered by Mr. Hawkins to house bill No. 760, was carried. House bill No. 760, as amended, was then ordered engrossed and printed.

Thursday, April 20th, page 1101.—Mr. Kirby, from the committee on engrossed bills, submitted the following report:

Mr. SPEAKER: Your committee on engrossed bills, to which was referred house bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to create the office of election commissioner; provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," begs leave to report that it has compared the same and finds it to be truly engrossed, and that the printed copies thereof furnished to the members are correct, except in line 3 of section 8 of the printed bill the word "four" should appear instead of the word "three;" which was read.

Thusday, April 20th, page 1106.—Mr. Nesbitt moved to take up house bill No. 760 for third reading and passage; which was carried. House bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which may hereafter have three hundred thousand inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," was taken up, read third time and passed by the following vote: (Here the journal records the names of 75 members voting aye and 53 members voting no, 3 members absent, 4 members absent with leave and 4 members reported sick). Mr. Barrett offered the following amendment to the title of bill: "Amend title to house bill No. 760 by striking out the words "to create the office of election commissioners," where the same occurs in line 3, and insert in lieu thereof the words "to provide for the creation of a board of election commissioners," and by striking out the word "his" in said third line, and insert in lieu thereof the word "its," and by striking out the word "his," in the fourth line and inserting in lieu thereof the word "its," and further amend by adding at the end of the title the words, "and to repeal all acts and parts of acts in conflict or inconsistent herewith;" which was read and adopted.

Title to house bill No. 760, as amended, was agreed to.

Mr. Nesbitt moved to reconsider the vote by which house bill No. 760 was passed.

Mr. Barrett moved to lay that motion on the table; which was carried.

156 Saturday, May 20th, page 1661.—The following message was received from the senate through its secretary, Mr. Roach: Mr. Speaker, I am instructed by the senate to inform the house that the senate has taken up and passed house bill No. 760, entitled "An act to provide for the registration of voters in cities now having and which hereafter may have 300,000 inhabitants or more: to provide for the creation of a board of election commissioners; provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration

and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith;" which was read.

Monday, May 20, page 1674.—Mr. Coffey, from the committee on enrolled bills, submitted the following report: Also, house bill No. 760, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more, to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," begs leave to report that it has compared the same and finds them to be truly enrolled;

Which was read.

All business being suspended house bill No. 760, was then read at length, and, no objection being made, the speaker, in open session, in the presence of the house, affixed his signature thereto, as provided by the constitution.

And afterwards, to wit, on the 30th day of January, 1900, the relator files his motion to strike out evidence herein, which said motion is in words and figures as follows, viz:

In the Supreme Court of Missouri, October Term, 1899, February Sitting, Court en Banc.

STATE *ex Rel.* JAMES MCCAFFERY, LAWRENCE D. KINGSLAND, and George J. Kobusch, Relators,
*vs.*
ISAAC M. MASON, Re-pondent.

*Motion to Strike Out Evidence.*

Now comes the relator- in the above-entitled cause and moves the court to strike out all of the respondent's evidence for the following reasons:

First. That the same is irrelevant and immaterial.

Second. That the roll of the act as signed by the presiding officers of the two houses of the General Assembly in open session and approved by the governor, is conclusive that the act was legally passed.

Third. Because it is beyond the jurisdiction of the court to inquire into the form of procedure had by the General Assembly in passing the act.

Fourth. Because the court has no authority to interfere or pass upon the constitutionality of the action of one of the co-ordinate branches of the State government, recognized by the constitution, as to the manner in which constitutional provisions, affecting the proceedings of legislation, shall be carried out.

Fifth. Because the constitution provides a means by which each

house of the General Assembly shall be the final judge before a bill is signed by the presiding officers thereof, as to whether all the provisions of the constitution, mandatory or otherwise, regarding the introduction and passage of an act through the General Assembly, have been complied with.

157 Sixth. Because Exhibits "A," "B" and "E," introduced by defendant, pertain to matters not contained in the journals of either house.

EDWARD C. CROW, *Att'y Gen.*,
SAM. B. JEFFERIES,
*For Relators.*

W. J. STONE, *Of Counsel.*

And afterwards, to wit, on the 8th day of February, 1900, the further following proceedings were had in said cause, viz:

STATE *ex Rel.* JAS. MCCAFFERY, Rel.,
*v.*
I. M. MASON, Resp.

Come now the said parties, by attorneys, and after argument herein submit this cause to the court.

And on the same day the following stipulation was filed in said cause, viz:

STATE OF MISSOURI, *ss:*

In the Supreme Court.

STATE OF MISSOURI *ex Rel.* JAMES MCCAFFERY ET AL.
Plaintiff-,
*vs.*
ISAAC M. MASON, Respondent.
} Mandamus.

It is hereby stipulated and agreed between the parties hereto that the following may be considered by the court as evidence offered by the relators, subject only to the right of the respondent to object thereto on the ground of relevancy and materiality:

First. So much of the journals of the senate and the house of representatives of the 40th General Assembly of the State of Missouri as contain and set forth the rules adopted by the two bodies for their government.

Second. So much of Jefferson's Manual of Parliamentary Practice and a Digest of the Rules and Practice of the House of Representatives of the United States, prepared by Nathaniel T. Crutchfield and adopted at the second session of the 53rd Congress, as relate to the amendment of titles.

To the second offer respondent makes additional objection of in competency.

158 EDWARD C. CROW, *Att'y Gen'l*,
SAM. B. JEFFRIES,
*Ass't Att'y Gen'l*,
W. J. STONE,
*Attorneys for Relators.*
B. SCHNURMACHER,
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
*Attorneys for Respondent.*

And afterwards, to wit, on the 13th day of March, 1900, the further following proceedings were had in said cause, viz:

STATE OF MISSOURI at the Relation of JAMES McCaffery, Lawrence D. Kingsland, and George J. Kobusch, Relators,
*vs.*
ISAAC M. MASON, Auditor of the City of St. Louis, Respondent.
} Mandamus.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the preemptory writ of mandamus prayed for herein be, and the same is hereby, awarded, and that the said relators recover against the said respondent their costs and charges herein expended and have therefor execution.

(Opinion filed.)

Which said opinion is in words and figures as follows, viz:

159 In the Supreme Court of Missouri, October Term, 1899, Court in Banc.

STATE *ex Rel.* JAMES MCCAFFERY ET AL., Relators,
*vs.*
ISAAC M. MASON, Auditor, &c.
} Mandamus.

*Opinion.*

This is an original proceeding in this court, its object being to compel the city auditor to audit a certain bill of expenses incurred by relators, as the board of election commissioners, in and about the performance of their official duties in their capacity as such commissioners.

The return of the city auditor, giving reasons for refusing to audit the bill in question, states in substance that the law under which such election commissioners were appointed and are acting is constitutionally invalid for that in the course of its passage such

proceedings were had as violated the constitution of this State in several particulars.

The objections thus raised to the constitutional validity of the litigated act will now be discussed. That act is known as house bill No. 760, and is entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein and to repeal all acts and parts of acts in conflict or inconsistent herewith." Laws 1899, 179.

Section 37 of article IV of the constitution declares that "No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session; and before such officer shall affix his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that, if no objection be made, he will sign the same to the end that it may become a law. The bill shall then be read at length, and if no objections be made, he shall, in the presence of the house in open session, and before any other business is entertained, affix his signature, which fact shall be noted on the journal and the bill immediately sent to the other house. When it reaches the other house, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed, in every respect, as in the house in which it was first signed. If in either house any member shall object that any substitution, omission, or insertion has occurred, so that the bill proposed to be signed is not the same in substance and form as when considered and passed by the house, or that any particular clause of this article of the constitution has been violated in its passage, such objection shall be passed upon by the house, and if sustained the presiding officer shall withhold his signature; but if such objection shall not be sustained, then any five members may embody the same, over their signatures, in a written protest under oath against the signing of the bill. Said protest, when offered in the house, shall be noted upon the journal, and the original shall be annexed to the bill to be considered by the governor in connection therewith."

Commenting on that portion of the organic law, when it first came under review and within four years after the adoption of the constitution, this court said:

"We are convinced that the initial clause of the section that 'no bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session' is mandatory, though it is quite evident that the mandate of the constitution would be obeyed, so far as concerns proper authentication of the bill, when it receives the signature of the respective presiding officers in open session; but we do not regard the other clauses of the section under review as mandatory, for it i

to be observed that those clauses do not declare that 'no bill shall become a law' if the presiding officers or the members fail to perform the duties which the residue of the section imposes, but the only penalty directly expressed is that contained in the initial clause just noted. No inference is, however, to be drawn from this that the residue of the section is not to be obeyed, for certainly the duties it enjoins are clearly set forth. The framers of the constitution were evidently of the opinion that they might safely intrust the supervision of the details specified in the remaining clauses of the section to the members of the General Assembly, or else they would have never ordained that any member might by his objection impede the progress of legislation and arrest the signature of the presiding officer to the pending bill on the ground that some unwarranted omission, substitution, or insertion had occurred or that some provision of the constitution had been violated. Herein lies, in our opinion, the only constitutional corrective for a failure to observe the provisions of the remaining clauses of the section under discussion and to yield a ready obedience to them.

If it be said that this construction leaves it optional with the legislature whether they shall comply with the explicit commands of the other clauses of the section, the obvious reply is that confidence must be reposed somewhere; that the very nature of republican government demands and presupposes it; that if the trust thus reposed is not well founded, that if integrity is not to be found among the legislative representatives of the people, it would be
but an easy matter by a simulated observance of constitu-
162 tional forms in the registry of falsehoods upon the journals
to evade and defeat the most rigid provisions of the organic law that the wit of man is capable to devise.

As no objection or protest is 'noted on the journal' of either branch of the General Assembly, the only natural and reasonable conclusion for us to reach is that benign conclusion of the law itself, sanctioned by the wisdom of ages, which presumes in favor of right, and not in favor of wrong. Similar presumptions are daily indulged in respecting judicial proceedings, and no reason occurs why a similar liberality of inference should not obtain in regard to legislative proceedings in many instances. Viewing the subject in this light, we regard it unimportant that the journals of the respective houses do not disclose that strict observance of formality which should properly attend the passage of a bill through its various legislative stages, as, for instance, that the presiding officer suspended all other business and declared that such bill would then be read, and that if no objections were made he would sign the same, to the end that it might become a law, nor that the bill was immediately sent to the other house. Counsel for respondent fails to observe that section 37, while requiring these things to be done and these forms to be observed, nowhere requires that they be noted on the journal, the only facts requisite to be noted there, as specified in that section, being that of the signing of the bill and of any protest that may be offered." State *v.* Mead, 71 Mo., loc. cit., pp. 271-'2.

Mead's case received the unanimous approval of the members of this court, and was approvingly followed in State *ex rel. v.* Field, 119 Mo., 593.

Under these rulings it must be held that in the absence of a protest, as already indicated, pointing out in what particulars
163 the constitution has been violated during the passage of the bill, that it will be presumed that the legislature was not remiss in its duty in that regard, though the journals may have failed affirmatively to record the performance of such duty. This presumption forecloses any investigation as to what occurred during the progress of the bill either as to the occurrence of any substitution, omission, or insertion, while on its passage, unless it be the failure to conform to some mandatory requirement of the constitution like that pointed out in Mead's case, when discussing the initial clause of section 37, *supra*, which fails to make entry on the journal of the recital of obedience to such mandatory requirement; but it is obvious that these constitutional provisions which were designed to set forth the formulæ incident to the passage of a bill are wholly separate and apart from considerations which go to the constitutionality of a bill, regardless of the strictest conformity to constitutional requirements which may have marked its course from its embryonic stage down to its final passage and approval.

In this case, however, a protest was entered; it is on the point that the act mentioned is invalid because it is a local and special law, and no notice, &c., was published nor recited in the act, and that therefore it violates section 54 of art. IV of the constitution. If the charge thus made in the protest holds, then the law must be deemed invalid. In support of this theory of the law's invalidity, it is asserted by respondent's counsel that "the Nesbit law is a special act for the reason that it is not uniform in its operation upon a class of cities or communities having 300,000 inhabitants or more, and separates cities not within counties in important particulars from those that are within counties. Thus, it is enacted, sec.
46, Laws of Mo. 1899, p. 196: 'In all cities not within coun-
164 ties such election commissioners, etc., shall be paid by the city, etc., etc.' The constitution primarily makes no such distinction, but requires the legislature to provide for the registration of voters in all cities and counties of more than 100,000 inhabitants. This is the fundamental class.

The Nesbit act, we think, unconstitutionally provides for registration 'in all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more.'

'When such a law has within its provisions that develop the intent to fasten it on a part of a class only, it will be decided illegal and void, and this is done when a particular city of the class 100,000 inhabitants or more is required to pay a different proportion of liability because of its separation from a county.' State *ex rel. v.* Herman, 75 Mo., 340; State *ex rel. v.* Jackson Co. Court, 89 Mo., 237; Murnane *v.* St. Louis, 123 Mo., 479.

The Nesbit act (section 3) makes provision for the vacation of the offices of election commissioners in cities now having 300,000 popu-

lation. It makes no provision for the vacation of such offices in cities which shall hereafter reach 300,000 population. In this it does not provide for future conditions, but applies solely to present ones; the exact test applied to the notary law by this court in the Hermann case, 75 Mo., 340, on which that law was held unconstitutional because special. The provision is 'said board of election commissioners shall perform all the duties and take the place of the present board of election commissioners of such cities immediately after this act becomes a law. The offices and boards of election commissioners, as now constituted and existing in such cities to which this act applies, are hereby abolished and the commission of such election commissioners hereby revoked'—that is, no provision is made to extend the act to cities hereafter acquiring 300,000 population."

And section 5 of article VIII of the constitution is quoted,
165 which reads as follows: "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000 but not otherwise."

Under this provision of the constitution it was entirely competent to enact the law now under consideration, because by that section of the organic law power is expressly bestowed on the legislature and they are commanded to "provide by law for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants;" and the power being granted, all means necessary to its effectuation went with it as incidents, and were part and parcel of the principal grant of power. *Ex parte* Marmaduke, 91 Mo., loc. cit., 262 and cas. cit. To the same effect see Sutherland Stat. Construct., sec. 341; 2 Beach Pub. Corp., § 1314; State *v.* Wilson, 87 Tenn., 697; Moulton *v.* Reid, 57 Ala., 325; Parker *v.* Way, 15 N. H., 51; 9 Bac. Ab., 219–'20; People *v.* Eddy, 57 Barb., 593. With such power conferred, no limitation was laid upon the legislature as to the number of population which any given city or county should contain in excess of one hundred thousand inhabitants. This language is too plain for discussion. As to the other words of the constitutional section, they are simply permissive, and their meaning is that the legislature are allowed, if they see fit, to enact similar laws respecting cities having a population exceeding 25,000 and not exceeding 100,000. As to the concluding words of the section, "but not otherwise," they simply permit legislation for registration in cities where the population exceeds 25,000 and does not exceed 100,000, and in the very section under review the constitution separates and distinguishes cities in counties having more than one hundred thousand inhabitants from those
166 cities having a population less than one hundred thousand and more than twenty-five thousand inhabitants.

And the legislature had the right to require cities not within counties to pay for election expenses. If they had not such right, then it would follow that such expenses could not be paid at all, as

under the general law such expenses are to be defrayed by the respective counties. Besides, under the statute respecting the construing of laws, it is declared that "whenever the word county" is used, * * * "the same shall be construed to include the city of St. Louis." * * * § 6570, R. S. 1889.

Moreover, in State *v.* Board of Education, 141 Mo., 49, this court held that "the legislature has control over the revenues of the city as over that of a county and State, and can direct by law that the expense of elections held in a municipality for the election of school directors or for local purposes shall be paid out of the treasury of the municipality from taxes levied and collected by municipal authorities." To the same effect see State *v.* Field, 119 Mo., loc. cit., 614; State *v.* Owsley, 122 Mo., 68.

It is further urged in opposition to the Nesbit law that section 3 of that act "makes provision for the vacation of the offices of election commissioners in cities now having 300,000 population; it makes no provision for the vacation of such offices in cities which should hereafter reach 300,000 population. In this it does not provide for future conditions, but applies solely to present ones; the exact test applied to the notary law by this court in the Hermann case, 75 Mo., 340, on which that law was held unconstitutional because special." There is this answer to this contention: In the first place, section 1 of the statute treats of "cities of this State now having or which hereafter may have three hundred thousand inhabitants or more," and the title of the act applies only to such cities. In such circumstances the character of the
167 act is stamped upon it by its first section. It was unnecessary, therefore, to mention or repeat in each or in any succeeding section cities which might thereafter have a population of 300,000 inhabitants or more. The law would imply this, and whatsoever the law will imply is as much part and parcel of a legislative enactment as though in terms inserted therein. State *ex rel.* Lemon *v.* Board, 108 Mo., 235; State *ex rel. v.* Walbridge, 119 Mo., loc. cit., 395; Coonce *v.* Munday, 3 Mo., 374; Han. & St. Jo. R. R. Co. *v.* Marion Co., 36 Mo., 294; Sutherland Stat. Constr., § 334.

In the second place, it is insisted that the Nesbit law violates section 7 of article IX of the constitution by the formation of a new class of cities within the first class, and is therefore in violation of that section of the constitution just mentioned, which limits the number of such classes to four, and declares that "the power of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions," and Murnane's case is cited as supporting this view, which it undoubtedly does.

Answering this objection on a former occasion it was said in the dissenting opinion in Door's case, 145 Mo., loc. cit., 499: "The constitution has made no exceptions to its general grant of power to the legislature, and the courts, without judicial usurpation, can make none; but it is urged that if you admit the power of the legislature by general law to amend the charter of the city of St. Louis, you thereby change the classification of the cities of this

State as provided for in section 7 of article IX of the constitution; but it is enough to say of such section that it has nothing whatever to do with the city of St. Louis, since that city is by the constitution singled out and segregated from all other cities in this State, by express mention by name, as well as by peculiar and special provisions shared by no other city. That section has no
168 more to do with the city of St. Louis than has section 16 of the same article, which confessedly has no application to that city, and no more has section 17."

But this theory respecting our constitution fell upon deaf ears and was not regarded as worthy a moment's consideration. Subsequently, however, Stegmiller's case come up here for adjudication (52 S. W., loc. cit., 726), whereupon it was said: "Again, we think it is plain that the framers of the constitution *ex vi termini* excluded from this legislative classification the city of St. Louis, which is expressly authorized to adopt its own scheme and charter, and all such cities as it authorized by section 16, art. 9, to frame and adopt their own charters. These cities constitute two constitutional classes distinct from those chartered and classified by the legislature. It follows that the legislature may legislate directly for these constitutional cities without infringing the constitution, and in legislating therefor it does not create a new class, but simply provides for a class created by the constitution."

With this interpretation of the constitution the members of this court then present in banc agreed, but no mention was made of Murnane's case, nor that it was overruled or in any manner questioned, nor of the fact that the dissenting opinion aforesaid had first advanced the same theory as that finally adopted in Stegmiller's case, *supra*.

Afterwards Stegmiller's case was followed in State *ex rel.* Hawes *v.* Mason (not yet reported) in banc, where it was said: "So much of the argument indulged in to demonstrate that the act under consideration is a special and not a general law is inapplicable to legislation of this character. St. Louis is organized directly under the constitution. It is not in either of the four classes which have been defined by the legislature under the constitution. It
169 would have been entirely appropriate for the legislature to have designated St. Louis by name instead of referring to it as a city of over three hundred thousand inhabitants," and in this opinion all the members of this court then present incontinently concurred; but the case in 123 Mo., 479, was passed *sub silento*, without as much as a nod of recognition.

Under these rulings Murnane's case, in so far as concerns the classification idea as applied to the city of St. Louis, must be regarded as no longer authoritative.

Passing now to other sections of article IV of the constitution said to have been violated in the passage of the Nesbit law, we look at section 25, which provides that "No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose." This purpose means the general purpose of the bill, not the mere details through

which and by which that purpose is manifested and effectuated. Were this otherwise it is easy to see that the process of legislation would be seriously hampered and embarressed by every amendment which might be offered, however germane it might be to the idea as formulated in the first draft of the bill. In addition to that, section 25 must be considered in connection with section 37 aforesaid, and inasmuch as no protest was offered, based on the prohibition of section 25 in relation to substitution, omission, or insertion, which are but other forms of amendment, it must needs follow that in contemplation of law no unwarranted substitution, &c., occurred pending the passage of the bill.

The Nesbit law is also assailed on the ground of violating section 31, which declares, "No bill shall become a law, unless, on its final passage, the vote to be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal and a majority of the members elected to each house be re-
170 corded thereon as voting in its favor." In Mead's case, *supra*, this section was held to be mandatory. Looking into the evidence offered by respondent, his Exhibit "D," at page 1106, containing the entries of the journal of the house of representatives of Thursday, April 20, 1899, shows that house bill No. 760, which is the bill in question, was, on motion of Mr. Nesbit, taken up for third reading and passage. The bill was read a third time and then passed by a vote of 75 members, with 53 voting in opposition thereto, 3 members absent, 4 members absent with leave, and 4 members reported sick. We will take judicial notice that the house of representatives is composed — 140 members. This being the case, it is obvious that house bill No. 760, the name by which the bill was known and identified, received the requisite constitutional majority.

Respondent's Exhibit "C," showing the entries of the journal of the senate, affecting the passage of the bill through the senate, shows that on Saturday, May 20, 1899, house bill No. 760 was placed on third reading and passage. The roll was called and the bill passed by 22 members voting in favor thereof and 10 members voting against it. Judicial notice is also taken of the fact that the senate consists of 34 members, and that consequently the bill carried by the requisite majority.

The exhibits offered in evidence by respondent also show that section 37 was complied with in both houses as to the signing of the bill. The mandatory provisions of section 54 of art. IV having been complied with, it is wholly immaterial under former rulings, so for as concerns the validity of the law, whether house bill 760 went through the precise course prescribed by other sections of that article of the constitution or not, as those sections are non-mandatory, and among that number is section 38 in regard to the presentation of the bill to the governor by the clerk, and the failure
171 of the latter to note the fact on the journal. The presumption is in favor of the proper presentation of the bill and of its timely signature. State *v.* Mead, *supra*. The same presumption holds as to all the other non-mandatory sections pleaded in respondent's return.

As to sufficiency of the title of the act, this is affirmed by Mead's case, *supra*; State *v.* Blackstone, 115 Mo., 427; St. Louis *vs.* Weitzel, 130 Mo., 600; State *v.* Slover, 134 Mo., 10; State *v.* Bockstruck, 136 Mo., 335.

Respondent also asserts that house bill 760 violates the following clauses of section 53 of art. IV of the constitution: Because it is a local or special law, 2, regulating the affairs of counties, cities, &c.; 11, for the opening and conducting of elections, or fixing or changing the places of voting; 14, creating officers, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts; 32, forbidding the passage of a local or special law where a general law can be made applicable and making it a judicial question, &c. All of these objections are answered by the adjudications in Kansas City *v.* Stegmiller and Hawes *v.* Mason, *supra*, that St. Louis stands alone, and that a law designating that city by name would be valid and a general law. State *v.* Miller, 140 Mo., 439. The law is general for the further reason that it makes provision for the future not only for cities now having a population of 300,000 or more, but for such cities which in the future may attain a like population.

Further objections are made to the law on the ground that it is in opposition to sections 2, 5, 8, 10, and 12 of article VIII of the constitution, as follows:

"SECTION 2. Every male citizen of the United States, and every male person of foreign birth, who may have declared his in-
172 tention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of 21 years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First. He shall have resided in the State one year immediately preceding the election at which he offers to vote. Second. He shall have resided in the county, city or town where he shall offer to vote, at least 60 days immediately preceding the election.

SECTION 5. The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise.

SECTION 8. No person while kept at any poor-house or asylum at public expense, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this State.

SECTION 10. The General Assembly may enacts laws excluding from the right of voting all persons convicted of felony or other infamous crime or misdemeanors connected with the exercise of the right of suffrage.

SECTION 12. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States and who shall not have resided in this State one year next preceding his election or appointment."

Section 5 of that article has already received sufficient discussion showing its mandatory nature; that it confers full power on the

legislature to require the municipality to pay the cost of elections held therein, and that such legislation is not special, but general in its nature, and not at war with the classification theory; and it may be further said that the act under review does not at
173 all militate against the constitutional right of any citizen otherwise eligible to vote. Registration laws grow more in favor as the years go by as tending to prevent fraud and thereby preserve the purity of the ballot-box. On this topic Judge Cooley observes:

"The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting on the same principles are always prescribed, and have never been supposed to be open to objection. Although the Constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls and there deposit their ballots, and not elsewhere, was a violation of the constitution because prescribing an additional qualification, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential." Const. Lim. (6th ed.), 757–'8.

Of the law in question it is said by respondent that it "deprives the citizens of the United States residing in the city of St. Louis of their right to the equal protection of the laws and imposes on citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office, and is null and void." This assertion is amply answered by the quotation already made from an eminent author and jurist, and it may be further answered in this way: Section 11 of the controverted act, in so far as it pre-
174 scribes the preliminary qualifications as to residence in order to entitle a citizen to vote, is the following:

"SEC. 11. Every male citizen of the United States, and every [male] person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, * * * shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the

precinct where his name is registered, and whereof he is registered as a resident."

This section is just the same as section 20 of what is known as the "Filley act," approved May 31, 1895, laws of that year, extra session, p. 5, and, with the exception of the bracketed word in section 11, the law was the same in 1889. Rev. Stats. that year, § 988.

The law of Ohio is substantially the same on this point as our own statute as to unmarried men, except that it requires a voter to have been resident of the county for 30 days and resident of the township, village, or ward of a city or village for 20 days next preceding the election. As to a voter who is the head of a family, greater privileges are accorded; *bona fide* removals from one ward of the city, &c., to another ward or to another township or village in the same county, and *vice versa*, are permitted. 1 Bates Annot. Stats. Ohio, § 2945.

In Kentucky the statute is in the language of the constitution of that State, and requires a residence in the State for one year, in the county six months, and in the precinct 60 days. Kentucky Stats., 1894, § 1439.

In Illinois the language of the statute following that of the State constitution requires a residence in the State for one year, in the county 90 days, and in the election district 30 days. 2 Starr & Curtis Annot. Stats. Ill., 1652, § 66.

In Massachusetts the constitutional and statutory requisites as to time of residence prior to voting are one year in the State and six months in the town or district, thus differing from similar regulations in Kentucky only in the fact that in the latter 60 days' residence is required in the precinct, so that it will be noted that the preliminary requirements as to the right to vote in this State are not more stringent, at least as to single men who offer to vote, than those in the State of Ohio.

But whether they were or not does not signify, since, as remarked by an author on the subject under discussion, "the power to provide for the orderly exercise of the right of suffrage, which we have seen belongs to the State legislature, includes the power to enact registry laws and to prohibit from voting persons not registered. It is now generally admitted that these laws do not add to the constitutional qualifications of voters and are therefore not invalid." McCrary on Elections (4th ed.), § 127.

In Illinois, where the act required registration to be complete by the third Tuesday before the election, it was held constitutional, the court remarking: "If it be admitted that the legislature can require a voter to establish his qualifications before election, it is difficult to see why, upon principle or as a question of power, it cannot require such proof to be made as well three weeks before the day of voting as ten days, or five days, or even one day prior thereto. The
176 real question involved in the objection is whether any man can be prevented from voting who proves, or offers to prove, on the day on which he seeks to cast his ballot that he is a legal voter. If cases can be supposed where the 'three-weeks' requirement will deprive qualified electors of the privilege of depositing

their votes, cases can also be supposed where one day's requirement will work the same result. This mode of reasoning carried out to its logical sequence will make any kind of a registry law unconstitutional. For it would be a physical impossibility for the judges of election to receive the votes and make up the registry at the same time and on the same day." People *v.* Hoffman, 116 Ill., 587.

The constitution of that State requires "all elections shall be free and equal," and yet in that case it was ruled that this declaration "does not necessarily mean that there must be uniformity of regulation in regard thereto in all portions of the State. Certain regulations may be prescribed for the conduct of elections in cities and villages, though they may have no application to the country places."

It will be found upon examination that the great current of authority flows in the direction of holding it entirely competent for the legislature to regulate registration and the conduct of elections in the manner above indicated, the origin of these rulings being Capen *v.* Foster, 12 Pick., 587; see also State *ex.* Butts, 431 Kas., 537; Weil *v.* Calhoun, 25 Fed., 865; *In re* Polling Lists, 13 R. I., 729; Patterson *v.* Barlow, 60 Pa. St., 54; Myers *v.* Moffet, 2 Bart. Elec. Cas., 564.

And in relation to voters in St. Louis being denied "the equal protection of the laws" by the controverted statute, this charge may be answered and refuted by the language of Mr. Justice Bradley in Missouri *v.* Lewis, 101 U. S., loc. cit., 31: "We might go still further and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system
177 of laws or judicature it sees fit for all or any part of its territory. If the State of New York, for example, should see fit to adopt the civil law and its method of procedure for New York city and the surrounding counties and the common law and its method of procedure for the rest of the State, there is nothing in the Constitution of the United States to prevent its doing so. This would not of itself, within the meaning of the fourteenth amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the State should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to, for, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

In concluding this portion of the opinion it may be well enough to say that in their general features most of the election laws of our neighboring States, as well as of our own, appear to be in their general features and design the same, to wit, that of preventing fraud and of making it more difficult to defeat the will of the people as recorded or as intended to be recorded at the polls.

In Ohio, for instance, the secretary of state is *ex officio* "State supervisor of elections," and he appoints 4 deputy supervisors in each county in the State of different political parties, and they, in

counties where no registration is done, appoint judges and clerks of each political party for service at elections. In cities of the first and second classes a board of elections is appointed by the mayor, and they shall be equally of the leading political parties, and they
178 appoint registrars, judges, and clerks of each of the two leading political parties to attend at elections in such cities.

In Illinois the "board of election commissioners" is appointed by the county court. They serve in every city, village, and incorporated town. Such commissioners must be three in number, two of them of the leading political parties. Such commissioners select three electors, who are to act as election judges for each precinct, and the two leading political parties are to have one judge each and one of the clerks, and these number vary as to judges and clerks as to the leading political party represented by a minority of all the commissioners. The board of election commissioners appoint a chief clerk and have other clerical assistants.

In this State, under the act in question, the governor appoints a "board of election commissioners," three in number. This is done by and with the advice and consent of the senate. One of these commissioners is required to be of the opposite political party to which the governor belongs. Such commissioners are required to give bond, with security in the sum of $10,000, for the faithful performance of their duties. These commissioners appoint and commission one deputy election commissioner, who is to be the secretary of the board, and he may employ other clerical assistants if necessary. These commissioners select and choose four electors as judges of election for each precinct and two clerks, and "two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks."

In Kentucky, under what is commonly called the "Gobel law," the General Assembly elects "the State board of election commissioners." This board appoints a secretary. This board appoints for each county in the Commonwealth, styled the "county board of election commissioners." This county board appoints for each election precinct "two judges, one clerk, and one sheriff of
179 election," and they "shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party and the other of a different party, and there shall be the like difference at each voting place between the sheriff and clerk of election." This summary of the election laws of three States, besides our own, does not disclose any very marked differences between these laws in general outline and operation. If honestly and faithfully administered the result will be in accordance with such proper administration. If otherwise administered the result will be such as might attend the operation of the most carefully drafted law; but certainly it would seem with an even division of the judges and clerks in political opinion at each election precinct that a considerable safeguard is thrown around the purity of the ballots at the polls and the prevention of fraudulent returns being made.

Respondent further contends that inasmuch as the Nesbit law professedly repeals the act entitled "An act to create a board of elec-

tion commissioners," approved May 31st, 1895, and this act is approved June 19th, 1899, and what is known as the Cardwell act in relation to cities having over one hundred thousand inhabitants, which purports to amend said act of 1895, and was approved also on June 19th, 1899, that therefore the repeal of the act aforesaid was not accomplished. In reference to this it is enough to say that the Cardwell act is not before us for adjudication; that so far as concerns the Nesbit act, it does repeal the act of 1895. Whether it be possible to amend an act and make it a valid law taking effect on the day its repeal is accomplished by another act is not involved in the issues now before us, and any utterance we might make on the subject would be wholly *obiter*. We shall therefore decline to consider or rule the point.

Finally, section 46 of the Nesbit law, as already stated, gives full authority (even if it would not be granted by necessary
180 and inevitable implication, as aforesaid) to compel the city to pay the expenses incurred by the election commissioners, and ordinance 19835, known as "Relators' Exhibit 2," shows the sum of $75,849.25 was appropriated by the municipal assembly for "election and registration" purposes. This being the case, section 46, *supra*, takes hold of the appropriation thus made and will disburse it as occasion may require.

The premises considered, we award the peremptory writ.

All concur—Burgess and Marshall, JJ., in toto; Gantt, C. J., and Brace and Valliant, JJ., in all except the remarks about the Murnane case.

T. A. SHERWOOD, *J.*

In the Supreme Court of Missouri, in Banc, October Term, 1899.

STATE *ex Rel.* MCCAFFERY ET AL.
*v.*
I. M. MASON.

*Separate Opinion of Gantt, C. J., and Brace and Valliant, JJ.*

We concur in the opinion, save and except so much thereof as declares the Murnane case overruled.

In our opinion, the constitution commands the General Assembly to provide a system of registration of voters in all cities having a population of more than one hundred thousand inhabitants, and there is no provision of the organic law requiring the General Assembly to classify cities for that purpose, as there is in providing charters for the various classes of cities, and hence we respectfully submit that the discussion of section 7 of article IX of the constitution in this case is not relevant.

181 We have no doubt whatever that it is entirely competent for the legislature in its wisdom by general laws to provide one system for cities having over one hundred thousand inhabitants and less than three hundred thousand, and other regulations for cities having three hundred thousand inhabitants and over.

The people by the constitution conferred the legislative power upon the General Assembly, subject to the limitations therein contained, and there is no such limitation as that claimed by respondent.

The classification theory has nothing to do with the case, and the act in this respect violates no article of the constitution.

The power to regulate elections is a governmental function and the city of St. Louis is just as much subject to the laws of the State in this regard as any other county or city of the State. The Murnane case involved a change of the character of the city of St. Louis in respect to a municipal function. The discussion of that case, in our opinion, is therefore *obiter*.

With this exception we fully agree in the very able opinion of our learned brother.

And afterwards, to wit, on the 22nd day of March, 1900, the further following proceedings were had in said cause, viz:

STATE *ex Rel.* JAS. MCCAFFERY ET AL., Rel.,
*v.*
I. M. MASON, Resp.

Comes now the said respondent, by attorney, and files his motion for a rehearing herein.

Which said motion is in words and figures as follows, to wit:

In the Supreme Court of Missouri, in Banc, October Term, 1899.

182 STATE *ex Rel.* JAMES MCCAFFERY, L. D. KINGSland, and George J. Kobush, Relators,
*versus*
ISAAC M. MASON, Auditor City of St. Louis, Missouri, Respondent. } No. 9951.

*Original Proceeding for Mandamus.*

Now, at this day, comes Isaac M. Mason, auditor of the city of St. Louis, Missouri, respondent herein, and moves the court to grant him a rehearing in the above-entitled cause for the reasons, 1st, that questions decisive of the case and duly submitted by counsel have been overlooked by the court; and, 2nd, that the decision is in conflict with the provisions of the constitution of the State of Missouri; and, 3rd, that it is in conflict with the first section of the fourteenth amendment to the Constitution of the United States; and, 4th, that it is in conflict with controlling decisions of this honorable court, all as hereinafter more particularly specified, to wit:

(1.) The court overlooked the fact that the return of the respondent to the alternative writ and the journal of the house and senate affirmatively show that house bill No. 760, as it passed the house, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or

more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent therewith," did not pass the senate at all, but, on the contrary, the bill which passed the senate by a
183 call of the ayes and noes, as required by the constitution, was entitled "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein;" and, furthermore, that the president of the senate, according to the senate journal, did not sign house bill # 760 as it passed the house, but did sign a bill with a different title, to wit, the bill which was passed by the senate under the title last aforesaid.

(2.) The court in holding that in the absence of a protest pointing out in what particulars the constitution has been violated during the passage of the bill, and that it will be presumed that the legislature was not remiss in its duties in that regard, though the journals may have failed affirmatively to record the performance of such duty, and commenting on the protest which was filed to the act as a local and not a general act, as if the members of the senate who filed this protest, having based it on this ground alone, were precluded or this respondent is now precluded from making the points now urged against the law, overlooked the fact, shown by the record, that the members of the senate had no opportunity to protest against the signing of a bill under the title of the bill passed by the house, for it appears affirmatively by the senate journal that the only title ever read or heard of in the senate was the original title. Hence no member of the senate could possibly have known that the bill about to be signed by the president of the senate bore a different title. The court also overlooked the fact that the absence of any protest in the senate on the ground of fatal variance in the title is not only presumptive but positive evidence that none
184 of the opponents of this bill (and the journals of the senate shows it was hotly contested) knew or had any cause to suspect that the bill about to be signed by the president of the senate and claimed to have been signed by him bore any title other than that of the original bill, a title by which the bill had been read and referred to on every single occasion on which it was before the senate, from its first reading to its final signature. The court overlooked the fact that having no notice of a change of title, the members of the senate could not protest against the signature thereof on the ground that the title had been changed or was other than that which, according to their own journal, the bill appeared to have.

(3.) The court held that section 31 of article 4 of the constitution, providing for taking the vote on the final passage of a bill by yeas and nays, is mandatory, and then held that the journal

the senate showed that on Saturday, May 20, 1899, house bill # 760 was placed on its third reading and passage; that the roll was called and the bill passed by the requisite majority, but the court overlooked the fact that the bill which passed the senate, as affirmatively shown by the journal thereof, was a bill entitled "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offense and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," which was an entirely different bill from that shown to have been passed in the house by the journal thereof.

(4.) The court overlooked controlling decisions and authorities cited on pages 88 to 92 of respondent's brief, showing that under constitutions similar to ours the title of a bill is a material part of an act, and overlooked the fact that the title of the act as
185 passed by the house was entirely different from the title of the bill that was passed by the senate and entirely different from the title of the bill signed by the president of the senate, as clearly and affirmatively shown by the journals of both houses, such authorities being as follows: Cooley Con. Lim. (3rd ed.), sec. 141; Endlich on Inter. Stat., sec. 59, p. 75; Pa. R. R. Co. *v.* Riblet, 66 Pa. St., 164; Eby's Appeal, 70 Pa. St., 311; Holderman's Appeal, 104 Pa. St., 251; 23 Am. & Eng. Ency. of Law, p. 329, note 4; State *v.* Green, 36 Fla., 154; City of St. Louis *v.* Witzel, 130 Mo., 600, 616.

(5.) The court overlooked the rule of constitutional construction announced in the controlling case of Wells *vs.* Mo. Pac. R. R. Co., 110 Mo., 286, construing section 55 of article 4 of the constitution regarding extra sessions, wherein the court says, page 296, "Thus viewing the very definite provision before us, we cannot regard it otherwise than as mandatory. When the people have declared a certain form indispensable to the proper expression of their will, it is no part of our function to adjudge that form unnecessary or immaterial. On the contrary, our bounden duty — to enforce that declaration."

(6.) The court in construing the words "and not otherwise" in section 5 of article 8 of the constitution of Missouri overlooked the controlling decision in the case of Kansas City *ex rel. v.* Scarrit, 127 Mo., 642, construing the effect of those words in the organic law.

(7.) The court overlooked the contention of the respondent that section 5 of article 8 of the constitution of Missouri created a constitutional classification of cities and counties for registration purposes, 1st, into cities and counties of over 100,000 population without regard to maximum limit, in which cities and counties there must be registration; 2nd, cities of over 25,000 and
186 under 100,000 population, in which there may be registration, and, 3rd, the rest of the State in which there shall be no registration; and overlooked recognized authorities cited by respondent on pages 126 to 136, inclusive, of respondent's brief, to wit:

Sutherland on Stat. Const., sec. 14, 66, 454 notes; Wells *v.* Supervisors, 102 U. S., 635; Chandler *v.* Horn, 83 Ala., 390; Miller *v.* Wagenhousen, 18 Mo. App., 14; Grunby *v.* Webb, 44 Mo., 444; Dart *v.* Bagley, 110 Mo., 42; Rasmussen *v.* Baker, 50 Pac. R., 819; Endlich on Stat., sec. 533; Cooley Const. Lim., 78; Thomas *v.* Owens, 4 Md., 189; State *v.* Patterson, 98 N. C., 660; 4 S. E., 350; Bd. of Commissioners *v.* Coler, 96 Fed., 284; Matter of Dorry, 7 Port., 293; Rison *v.* Forr, 24 Ark., 161; People *v.* Sibertson, 55 N. Y., 50; State *v.* Goldstocker, 40 Wisc., 124; People *v.* McKinney, 32 N. Y., 374; Varney *v.* Justam, 86 Ky., 596; State *vs.* Johnston, 26 Ark., 281; Conner *v.* Walters, 8 Heisk., 504; Life Ass'n *v.* Bd. Comm., 49 Mo., 512; State *vs.* Duncan, 28 Wisc., 541; Pope *vs.* Allen, 58 Pa. St., 338; and particularly the case of *Ex parte* Joffee, 46 Mo. A., 360, which holds: "It is well settled that an affirmative enactment of a new rule implies a negative of whatever is not included or is different, and if by the language used a thing is limited to be done in a particular form or manner, it includes a negative that it shall not be done otherwise;" and the case of State *ex rel. v.* Foster, 119 Mo., 344, which holds that in construing constitutional enactments the expression of one thing is the exclusion of the other; and the controlling case of Hall *v.* Schœnecke, 128 Mo., 661, which holds that "where the aim and purpose of the law-making power would be plainly defeated if the command to do the thing in a particular manner did not imply the inhibition to do it in any other, no doubt can be entertained as to the mandatory character of the statute."

187 (8.) The court in construing section 5 of article 8 of the constitution of Missouri overlooked authorities, both text writers and decisions of supreme courts, hereinbefore quoted, holding that when the constitution defines the circumstances under which a right may be exercised or a penalty imposed the specification is an implied prohibition against legislative interference to add to the condition or to extend the penalty to other cases.

(9.) That the court overlooked the controlling case of State *ex rel. v.* Miller, 100 Mo., 439, and other cases cited on pages 132, 133, and 134 of respondent's brief, in holding that in the face of the mandatory provisions of sec. 5 of article 8 of the constitution the legislature could make a special law for registration purposes applicable to the city of St. Louis or to cities having 300,000 or more inhabitants.

(10.) The court overlooked the position of respondent that the Nesbit bill, if constitutional, expressly repealed the act of May 31, 1895, and the further contention of respondent that in order to sustain both the Cardwell amendment and the Nesbit act the Cardwell amendment and the act of May 31, 1895, must have inserted, by judicial construction, these words, to wit, "These acts shall apply to all cities over 100,000 and not exceeding 300,000 inhabitants." See respondent's brief, pages 119 to 122, inclusive.

(11.) The court misunderstood respondent when it cites him as saying this: "Respondent further contends that inasmuch as the Nesbit law professedly repeals the act entitled 'An act to create a

board of election commissioners,' approved May 31, 1895, and this act is approved June 19, 1899, and what is known as the Cardwell act in relation to cities having over 100,000 inhabitants, which purports to amend said act of 1895, and was approved also on June 19, 1899, that therefore the repeal of the act aforesaid was not accomplished." This was the contention of the relator
188 and not of the respondent. The latter made no such contention. On the contrary, the respondent contended that the Nesbit act repealed the act of May 31, 1895, and that the Cardwell amendment could not re-enact it by implication. The relator in his brief, on page 120, says: "The Nesbit law provides for registrations and elections in cities of 300,000 or more; at the same time it operates but in one city of the State, St. Louis, of which fact the court will take judicial notice; but the court will also take judicial notice that Kansas City is a city of more than 100,000 and less than 300,000 population. If it was the intention of the legislature to totally repeal and wipe out of the act of May 31, 1895, by the provisions of the Nesbit law, then it was the intention of the legislature to leave Kansas City without any law providing for registration therein. To place that interpretation on the legislative intention would be to arraign the General Assembly as guilty of a deliberate violation of section 5, article 8, of the constitution." In other words, if the act of 1895 was repealed by the Nesbit law, leaving no law in force as to cities between 100,000 and 300,000 inhabitants, the Nesbit law is confessedly unconstitutional. The court overlooked the respective contentions of relator and respondent in this behalf, but held that "so far as concerns the Nesbit act it does repeal the act of 1895." If this means that the act of 1895 was repealed as to cities covered by the Nesbit act—*i. e.*, cities of 300,000 or more inhabitants—then the court overlooked the mandatory requirements of section 5, article 8, of the constitution of Missouri.

(12.) The holding of the court that the act of 1895 was repealed "so far as concerns the Nesbit act" means, as we understand it, the court, that the act of 1895 as amended by the Cardwell act applies to cities of over 100,000 and up to 300,000 inhabitants, and that the Nesbit act applies to St. Louis. In so ruling the court
189 overlooked the fact that this is contra-y to the first section of the 14th amendment of the Constitution of the United States, plead in the return of the respondent and urged by his counsel in their brief and on oral argument, for the reasons that by section 9 of the act of May 31, 1895, judges and clerks of elections are to be appointed by the board of election commissioners and reported to the circuit courts for confirmation, with the right to any interested citizen to file objections to such judges and clerks, which objections were to be heard and determined by the court on a day fixed for that purpose, whereas by section 8 of the Nesbit act the board of election commissioners are empowered to appoint 4 judges of election and 2 clerks, without any supervision whatever and with no right to citizens of St. Louis to object thereto or to be heard thereon before any court or judicial body.

Section 31 of the act of May 31, 1895, makes provision for any

voter whose name is refused registration or who is stricken from the registration list to apply to the circuit court for reinstatement or registration, which application is to be heard summarily and determined by the court, and if found qualified the name is placed upon the registry list, and if refused the applicant is given a right of appeal to the supreme court or the court of appeals, whereas under the Nesbit act, by section 21, the board of election commissioners is made the board of appeals to hear applications for reinstatement and registration, and no appeal whatever to the courts is provided, and no citizen of St. Louis is given his day in court.

Many other differences between the Nesbit act and the act of May 31, 1895, as amended will be apparent upon a comparison of the two acts which, together with those above cited, show that the citizens
190 of the cities and counties of the State of Missouri having 300,000 or more inhabitants are, contrary to section one of the 14th amendment to the Constitution of the United States and in violation of it, denied the equal protection of the laws provided for cities having 100,000 or more inhabitants up to 300,000, and their privileges and immunities as citizens of the United States are abridged, and this, too, notwithstanding the provisions of sec. 5 art. 8, of the constitution of Missouri, providing for registration in cities and counties having a population over 100,000, and notwithstanding sec. 3, art. 4, of the constitution of Missouri, providing that "In all other cases where a general law can be made applicable, no local or special law shall be enacted, and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject."

Wherefore, for the reasons above stated and other objections apparent upon the face of the opinion herein, respondent respectfully asks this court for a rehearing of the case.

B. SCHNURMACHER,
*City Counselor.*
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
*For Respondents.*

And afterwards, to wit, on the 27th day of March, 1900, the further following proceedings were had in said cause, viz:

STATE *ex Rel.* JAS. MCCAFFERY, Rel.,
*v.*
I. M. MASON, Auditor, Resp.

Now, at this day, the court, having fully considered and understood the motion heretofore filed for a rehearing herein, doth order that said motion be, and the same is hereby, denied.

191 And afterwards, to wit, on the 31st day of March, 1900, the further following proceedings were had in said cause, viz:

STATE *ex Rel.* JAS. MCCAFFERY ET AL., Relators,
vs.
I. M. MASON, Auditor, Respondent.

Now, at this day, there is presented to the Honorable James B. Gantt, chief justice of the supreme court of the State of Missouri, in chambers, a writ of error to the Supreme Court of the United States; a citation, directed to said relators, citing and admonishing them to appear at a Supreme Court of the United States on the 30th day of April, 1900; an assignment of errors and a bond in the sum of five thousand dollars; which said writ of error is allowed, said citation signed, and said bond approved, ordered filed, and made a part of the record herein.

Which said assignment of errors are in words and figures as follows, to wit:

In the Supreme Court of the United States, October Term, 1899.

ISAAC M. MASON, Auditor of the City of St. Louis, Missouri, Plaintiff in Error,
vs.
THE STATE OF MISSOURI *ex Rel.* JAMES McCaffery, Lawrence D. Kingsland, and George J. Kobush, Defendants in Error.
} Error to the Supreme Court of the State of Missouri.

*Assignment of Errors and Prayer for Reversal.*

Now comes Isaac M. Mason, plaintiff in error in the above-entitled cause, and prays the court to reverse the judgment rendered by the honorable the supreme court of the State of Missouri,
192 *wherein* the cause lately pending in said last-named court, — The State of Missouri *ex rel.* Jas. McCaffery, Lawrence D. Kingsland, and George J. Kobush were relators and the said plaintiff in error, Isaac M. Mason, auditor of the city of St. Louis, Missouri, was respondent, on account of the many and manifest errors committed by said court, to the prejudice of the plaintiff in error, as will appear by an inspection of the record thereof, and especially for the following reasons which are hereby set out as the—

*Assignment of Errors.*

I.

The act of the General Assembly of the State of Missouri entitled "An act to provide for the registration of voters in cities now having or which may hereafter have 300,000 inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment, and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elec-

tions therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19th, 1899, is in conflict with the 1st section of the 14th amendment to the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States and denies to citizens of the United States within the jurisdiction of and citizens of the State of Missouri *of* the equal protection of the laws.

II.

Said act of June 19th, 1899, denies to citizens of the United States who are inhabitants and citizens of the city of St. Louis and within the jurisdiction of the State of Missouri the equal protection of the laws.

193

III.

The decision of the supreme court of the State of Missouri in the above-entitled case in sustaining said act of June 19th, 1899, as a valid and constitutional enactment is a denial to the citizens of St. Louis and of this plaintiff in error, who are within the jurisdiction of the State of Missouri, of the equal protection of the laws and of their privileges and immunities as citizens of the United States.

IV.

The said supreme court of the State of Missouri erred in refusing to hold that the bill No. 760, which passed the senate of Missouri by a call of yeas and nays, as required by the constitution of the State of Missouri, was a different bill from that which passed the house of representatives, and erred in refusing to hold that the bill signed by the president of the said senate, according to the senate journal, was a different bill from that which passed the house, to wit, a bill under the following title, to wit: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more, to create the office of election commissioner, provide for his appointment and define his duties, to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

V.

The court erred in holding that in the absence of a protest pointing out in what particulars the constitution of the State of Missouri was violated during the passage of the bill, it would be presumed that the legislature was not remiss in its duties in that regard, although the journals may have failed affirmatively to record the performance of such duty, and further erred in commenting on the protest which was filed to the act as a local and not a general

194 act, as if the members of the senate who filed this protest, having based it on this ground alone, were precluded or this respondent was precluded from making the points urged in said court against the law in the face of the fact that the members of the

senate had no opportunity to protest against the signing of a bill under the title of the bill passed by the house, and in face of the fact that it appears affirmatively by the senate journal that the only title ever read or heard of in the senate was the title as hereinbefore set forth.

VI.

The court erred in not holding that the senate having no notice of the change in title of the bill, the members of the senate could not protest against the signature thereof by its president on the ground that the title had been changed or was other than that which, according to its own journal, the bill appears to have.

VII.

The court erred in holding that section 31 of article IV of the constitution of the State of Missouri, providing for taking the count on the final passage of a bill by yeas and nays, was mandatory, and then holding that the journal of the senate showed that the bill *which* was passed in accordance with that provision of the constitution, when it was affirmatively shown by the senate journal that the bill passed by the senate was different from that passed by the house.

VIII.

The court erred in holding that the title to the bill is an immaterial part of an act under the constitution of the State of Missouri, and that the fact that the title of the bill as passed by the house was entirely different from the title of the bill that was passed
195 by the senate and signed by the president of the senate, as affirmatively shown by the journals of both houses, was not contrary to the constitution of the State of Missouri.

IX.

The court erred in refusing to hold that section 9 of article VIII of the constitution of the State of Missouri prescribed the methods under which registration laws could be passed in the State of Missouri as being mandatory and directing the only method by which said registration laws could be passed.

X.

The court erred in refusing to hold that the limitations of section 5 of article VIII of the constitution of the State of Missouri limited the legislature to passing the general act for the registration of voters in all cities having over 100,000 inhabitants.

XI.

The court erred in refusing to hold that section 5 of article VIII of the constitution of the State of Missouri created a constitutional classification in cities and counties for registration purposes, 1st, into cities and counties of over 100,000 population without regard to

the maximum limit in which cities and counties there must b registration; 2nd, cities of over 25,000 and under 100,000 populatio in which there may be registration; and 3rd, the rest of the State i which there shall be no registration, and that said section was mandatory rule controlling the action of the legislature and requir ing it to pass general laws on the subject of registration applicabl to all cities in the State containing over 100,000 inhabitants.

XII.

The court erred in refusing to hold that article VIII, section 5, o the constitution of the State of Missouri was an affirmative enact ment of a new rule, which implied a negative of whatever 196 was not included or is different, and that by the language used therein the thing was limited to be done in a particula form or manner, and included a negative that it should not be don otherwise.

XIII.

The court erred in refusing to hold that in construing section of article VIII of the constitution of the State of Missouri that whe the constitution defined the circumstances under which a right ma be exercised or penalty imposed the specification is an implied pro hibition against legislative interference to add to the condition o to extend the penalty to other cases.

XIV.

The court erred in holding that in the face of section 5 of articl VIII of the constitution of Missouri the legislature could mak special laws for registration purposes applicable to the city of S Louis, having 300,000 or more inhabitants alone.

XV.

The court erred in not holding that the "Nesbit bill," which th court held to be constitutional, expressly repealed the act of Ma 31st, 1895, and left all cities under 300,000 inhabitants in the Stat of Missouri without any registration act whatever, in the face of th mandatory requirements of section 5 of article VIII of the sai constitution.

XVI.

The court erred in holding that the "Nesbit bill" repealed th act of May 31, 1895, so far as regards cities covered by said "Nesb bill" and having more than 300,000 inhabitants, leaving the act o May 31, 1895, in force as to cities having 100,000 inhabitants o more up to 300,000 inhabitants, thereby creating a different rule o registration as to some of the cities in the State of Missouri havin over 100,000 from the rule of registration prescribed for the city o St. Louis.

XVII.

The court erred in not holding that if the act of May 31st, 1895, was repealed, then the Nesbit law, leaving no law in force as to cities between 100,000 and 300,000, was unconstitutional.

XVIII.

The court erred in holding that the act of May 31st, 1895, was repealed so far as concerns the "Nesbit" act, thereby holding that said act of May 31st, 1895, as amended by the Cardwell act, applies to cities of over 100,000 and up to 300,000 inhabitants, in face of the fact that this ruling is contrary to the first section of the 14th amendment to the Constitution of the United States, plead in the returns of the respondent and urged by his counsel in their brief and on oral argument, and again presented to the court on a motion for rehearing herein, for the reason that by section 9, by the act of May 31st, 1895, judges and clerks of election are to be appointed by a board of election commissioners and reported to the circuit court of the State for confirmation, with the right to any interested citizen to file objection to such judges and clerks, which objections were to be heard and determined by the court on a day fixed for that purpose, whereas by section 8 of the Nesbit act the board of election commissioners are empowered to appoint four judges of election and two clerks without any supervisions whatever, and with no right to the citizens of St. Louis to object thereto or to be heard thereon before any court or judicial body; and, further, that section 31 of the act of May 31st, 1895, makes provision for any voter whose name is refused registration, or who is stricken from the registration list, to apply to the circuit court for reinstatement or registration, which application is to be heard summarily and determined by the court, and, if found qualified, the name is placed upon the registry list,
198 and if refused the applicant is given the right of appeal to the supreme court or the court of appeals of the State, whereas under the Nesbit act, by section 21, the board of election commissioners are made the board of appeal to hear applications for reinstatement and registration, and no appeal whatever to the courts is provided, and every citizen of St. Louis is denied his day in court, all of which is contrary to the said 14th amendment to the Constitution of the United States; and, further, that other differences between the said Nesbit act and the act of May 31st, 1895, — apparent upon comparison of the two acts, which show that the citizens of cities and counties of the State of Missouri having 300,000 or more inhabitants are denied equal protection by the laws provided for cities having 100,000 up to 300,000, and their privileges and immunities as citizens of the United States are abridged, notwithstanding the provision of section 5 of article VIII of the constitution of Missouri providing for the registration in cities and counties having a population of over 100,000, and notwithstanding section 3 of article IV of the constitution of Missouri, providing that in all other cases where general laws can be made applicable

no local or special law shall be enacted, and whether the general law could have been made applicable in any case is declared to be a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject.

XIX.

The court erred in holding that in the passage of the Nesbit bill through the two houses of the General Assembly of the State of Missouri sections 25, 26, 27, 28, 32, and 38 of article IV of the constitution of the State of Missouri had not been violated, and in holding that said sections are not mandatory.

199

XX.

The court erred in holding that the said act of June 19th, 1899, was not in violation of section 5 of article VIII of the constitution of Missouri.

XXI.

The court erred in holding that said act of June 19th, 1899, was not in violation of sections 16 and 53 of article IX of the constitution of Missouri.

XXII.

The court erred in holding the said act of June 19th, 1899, to be a constitutional law under section 5 of article VIII and section 53 of article IX of the constitution of Missouri.

XXIII.

The act of June 19th, 1899, is in violation of the foregoing cited provisions of the constitution of Missouri and of the Constitution of the United States.

XXIV.

The court erred in overruling a motion for a rehearing filed by plaintiff in error, which should have been sustained for the reasons in said motion for rehearing set out.

All of which is respectfully submitted.

B. SCHNURMACHER,
*City Counsellor.*
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
*Attorneys for Plaintiff in Error.*

And which said bond is in words and figures as follows, to wit:

200 Know all men by these presents that we, Isaac M. Mason, as principal, and Henry Zeigenhein and Chris. Schawacker, as sureties, are held and firmly bound unto James McCaffery, Lawrence D. Kingsland, and George J. Kobush in the full and just sum of five thousand dollars, to be paid to the said James McCaffery, Lawrence D. Kingsland, and George J. Kobush; to which payment,

well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of March, in the year of our Lord one thousand nine hundred.

Whereas lately, at the October term, A. D. 1899, of the supreme court of Missouri, in a suit depending in said court between the State of Missouri *ex rel.* James McCaffery, Lawrence D. Kingsland, and George J. Kobush, relators, and Isaac M. Mason, auditor of the city of St. Louis, Missouri, defendant, judgement was rendered against the said defendants, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said relators, citing and admonishing them to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., not exceeding thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said defendant shall prosecute said writ to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

ISAAC M. MASON. [SEAL.]
H. Y. ZIEGENHEIN. [SEAL.]
CHRIS. J. SCAWACKER. [SEAL.]

Sealed and delivered in presence of—

A. F. LANGE.

Approved by—

JAS. B. GANTT,
*Chief Justice.*

201 UNITED STATES OF AMERICA, } *sct:*
*Western District of Missouri,* }

STATE OF MISSOURI, } *ss:*
*City of St. Louis,* }

Before me, A. F. Lange, notary public for the city of St. Louis, Missouri, personally appeared Henry Ziegenhein, to me well known, who upon oath states that he is worth over and above his indebtedness the sum of twenty-five thousand dollars, and that he owns real property to that amount, subject to execution, in the city of St. Louis, Mo.

HENRY ZIEGENHEIN.

Subscribed and sworn to before me this 2nd day of April, 1900.

[L. S.] ALBERT F. LANGE,
*Notary Public, City of St. Louis, Mo.*

My commission expires April 14, 1903.

UNITED STATES OF AMERICA, } *sct:*
*Western District of Missouri,* }

STATE OF MISSOURI, } *ss:*
*City of St. Louis,* }

Before me, A. F. Lange, notary public for the city of St. Louis, Mo., personally appeared Chris. Schawacker, to me well known, who upon oath states that he is worth over and above his indebtedness the sum of fifteen thousand dollars, and that he owns real property to that amount, subject to execution, in the city of St. Louis, Mo.

CHRIS. SCHAWACKER.

Subscribed and sworn to before me this 2nd day of April, 1900.

[L. S.] ALBERT F. LANGE,
*Notary Public, City of St. Louis, Mo.*

My commission expires April 14, 1903.

202 UNITED STATES OF AMERICA, } *sct:*
*Western District of Missouri,* }

STATE OF MISSOURI, } *ss:*
*City of St. Louis,* }

I do hereby certify that the parties subscribing the within bond are, respectively, over the age of twenty-one years and are competent to contract, and that their signatures to said bond are genuine; I further certify that said bond is good and sufficient.

Witness my hand and seal this 2nd day of April, 1900.

ALBERT F. LANGE,
*Notary Public, City of St. Louis, Mo.*

My commission expires April 14, 1903.

Here follows three ten-cent revenue stamps.

STATE OF MISSOURI, *sct:*

I, John R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript of the record and proceedings had and made in the supreme court of the State of Missouri in the cause wherein The State of Missouri at the relation of James McCaffery, Lawrence D. Kingsland, and George J. Kobush were relators and Isaac M. Mason, auditor of the city of St. Louis, was respondent, as fully as the same remain of record and on file in my office.

Seal of the Supreme Court of Missouri.

In testimony whereof I have hereunto set my hand and the seal of the supreme court of the State of Missouri. Done at the city of Jefferson this 13th day of April, 1900.

JNO. R. GREEN, *Clerk.*

Endorsed on cover: File No., 17,728. Missouri supreme court. Term No., 614. Isaac M. Mason, auditor of the city of St. Louis, Missouri, plaintiff in error, *vs.* The State of Missouri *ex rel.* James McCaffery, Lawrence D. Kingsland, and George J. Kobush, relators. Filed April 23, 1900.

No. Orig. 258

Office Supreme Court U.S.
FILED
APR 30 1900
JAMES H. McKENNEY,
CLERK

Motion to Advance.

# SUPREME COURT OF THE UNITED STATES.

Filed April 30, 1900.

OCTOBER TERM, 1899.

ISAAC M. MASON,
Plaintiff in Error,

vs.

STATE OF MISSOURI EX REL., JAMES McCAFFERY, LAWRENCE M. KINGSLAND AND GEORGE J. KOBUSH,
Defendants in Error,

614

ERROR TO SUPREME COURT OF MISSOURI.

MOTION TO ADVANCE CAUSE AND NOTICE THEREOF.

BENJ. SCHNURMACHER,
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
Attorneys for Plaintiff in Error.

St. Louis Law Printing Co., 311—315 Locust St., Phone: Main 1819A

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25567

In the Supreme Court of the United States,

October Term, 1899.

Isaac M. Mason, Plaintiff in Error,

vs.

The State of Missouri, *ex rel.*, James McCaffery, Lawrence D. Kingsland and George J. Kobush, Defendants in Error.

In Error to the Supreme Court of Missouri.

Notice of Motion to Advance.

To the Above Named Defendants in Error, and Hon. E. C. Crow, Attorney-General of Missouri, and Hon. William J. Stone, Their Attorneys of Record:

You are hereby notified that, at the opening of the Supreme Court of the United States, at the City of Washington, District of Columbia, on Monday next, April 30, 1900, or as soon thereafter as counsel can be heard, we will present to said court a motion to advance the above entitled cause on the docket, and for an early hearing thereof, for the reasons stated in the said motion, a copy of which is hereto annexed.

Benj. Schumacher,
Geo. P. Howell,
Noble C. Butler,
Morton Jourdan,
Attorneys for Plaintiff in Error.

St. Louis, April 23, 1900.

due service of the within notice is admitted, and we join prayer to have cause advanced for an early hearing.

W. J. Stone,
For Defendants in Error.

April 23, 1900.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ISAAC M. MASON,
Plaintiff in Error,
vs.
STATE OF MISSOURI EX REL., JAMES McCAFFERY, LAWRENCE M. KINGSLAND AND GEORGE J. KOBUSH,
Defendants in Error,

Motion to Advance.

**IN ERROR TO THE SUPREME COURT OF MISSOURI.**

Now comes Isaac M. Mason, plaintiff in error in the above entitled cause, and moves the Court to advance said cause on the docket and set the same for hearing and argument at the earliest day the Court can find time to hear the same.

The matter involved in said cause, briefly stated, is the validity and constitutionality of a pretended act of the General Assembly of the State of Missouri, approved June 19, 1899, entitled, "An Act to provide for the registration of voters in cities now having, or which hereafter may have 300,000 inhabitants, or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses, and providing penalties

25563



therefor, and prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith."

It was claimed by plaintiff in error in the Supreme Court of the State of Missouri, in which Court said suit was brought as an original proceeding in mandamus, and will be claimed by him in this Court, that said act was not passed by the General Assembly of the State of Missouri in accordance with the constitutional provisions of said State relating to and governing the passage of bills, and the enactment of laws, and was therefore and is not now a valid enactment—and the decision of said Supreme Court was against said claim.

It was further claimed and is now claimed, that even if said act was passed in a constitutional manner, it was and is in conflict with Section 53, of Article 4, of the Constitution of the State of Missouri, in that it is a special and local law regulating the affairs of the City of St. Louis, alone; that it is a special law for the opening and conducting of elections and fixing and changing the places of voting, and creating offices and prescribing the powers and duties of officers in the City of St. Louis alone and in the election districts thereof, and that it violates that part of said section which provides that "in all cases where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject."

It was and is claimed that, being a local and special Act, it was not passed as required by Section 54 of Article 4 of said Constitution.

It was and is claimed that it violates Section 5 of Article 8 of said Constitution, which ordains that "the General

Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000, inhabitants and not exceeding 100,000, but not otherwise."

On each and all of said claims the decision of said Court was against plaintiff in error.

**It was further claimed in said Court in said cause, and is now here claimed, that said law violates the first section of the Fourteenth Amendment of the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States, and denies to persons within the jurisdiction of said State the equal protection of the laws; and the said claim was denied by said Supreme Court.**

**In deciding said cause adversely to plaintiff in error, the Supreme Court of said State decide against a right claimed by plaintiff in error under the Constitution of the United States, and did abridge the privileges and immunities of citizens of the United States, and did deny to persons within the jurisdiction of the State of Missouri the equal protection of the laws.**

**It was and is claimed by plaintiff in error that said decision of the Supreme Court of Missouri in said cause, in sustaining said law as valid, does deprive plaintiff in error of the equal protection of the laws.**

**It was and is claimed that said Act, and the decision sustaining it, makes one law and rule of action for the citizens of Missouri residing in the City of St. Louis, and another and different rule and right for citizens of Missouri residing outside of said city, and deprives the citizens of Missouri residing in the City of St. Louis of rights, privileges and immunities granted to citizens of Missouri residing outside of said city, and denies them the equal protection of the laws, and this claim was denied, and the decision was adverse to plaintiff in error.**

For reasons for this application to advance said cause, plaintiff in error assigns the following:

A general election will be held in the State of Missouri,

25569



and City of St. Louis, said city having a population of over 300,000 inhabitants, and being the only city in the State having that many inhabitants or more, on Tuesday, November 6, 1900, for the election of presidential electors, congressmen and all State officers. There are three Congressional Districts included in the City of St. Louis; the total vote cast for presidential electors in said city at the last national election was 106,996, and the total vote of the State was 673,906. At the ensuing election it will probably be increased about 12 per cent.

The question involved in this case, being as stated, whether the Act of June 19, 1899, before cited, is valid and constitutional, or not, it is of the highest moment to have that determined before such election is held; for if the contention of plaintiff in error is correct, and is sustained by this Honorable Court, then the acts of the persons who claim appointment under said law, as registration and election officers, would be void; the office which they claim, having no existence in law, they would not be *de facto* officers (see Norton v. Shelby County, 118 U. S. 425; *loc. cit.* 442), and the election would fail.

If the contention of plaintiff in error is sustained, then the officers who should conduct such election and the registration therefor, are those heretofore appointed and claimed by plaintiff in error to be now in office under an Act of the General Assembly of the State of Missouri, approved May 31, 1895, entitled: "An Act to create a Board of Election Commissioners in cities now having, or which hereafter may have over 100,000 inhabitants; to provide for the appointment of the same; to define the duties of such board; to provide for the registration of all voters in such cities to govern elections therein, defining offenses and providing punishments thereof; prescribing penalties for violating the provisions of this Act; and abolishing the office of Recorder

and Deputy Recorder of Voters," and its amendments. The Act of June 19, 1899, purported to repeal the Act last cited, and to abolish the offices created by it, and it is not claimed that defendants in error are the successors in office of those appointed under the act of May 31, 1895, nor is it claimed that they have any office, or right to office save under the Act of June 19, 1899. Therefore, if said act is void as unconstitutional, their acts as registration and election officers would be absolutely void, and any election held thereunder would also be void.

Such a result would affect the right of three congressmen from the State of Missouri; it would affect the election of presidential electors from the State of Missouri, who, under the law of that State, are chosen by the people on a general ticket, and not by districts, and it would affect the title of all the State officers of the State of Missouri, and especially of all those in the City of St. Louis, which is a municipality, and not in a county, and elects, at said election, three judges of its Circuit Court, a sheriff, circuit attorney, and other State officers.

To prevent the great confusion and complications, and possible menace to the peace of the whole nation, which would follow if the election is held under an invalid law, or under one which is in such serious and grave doubt, it is of the utmost, highest importance that the question as to the validity of said law be passed on in advance of such election, and at the earliest date possible.

The interests not only of the people of the City of St. Louis, and State of Missouri, but of those of the United States are, therefore, largely involved in this question, and consideration of public order and public safety, it is respectfully urged, requires its speedy determination.

Finally, it is respectfully urged, that the questions presented in and by said suit are of great public interest and

25570



concern, and involve the proper and legal exercise of the right of suffrage of more than 125,000 voters in said city directly, as also the vote of the State for its own officers, and in the Electoral College, and is, therefore, of vital importance to the City of St. Louis and its inhabitants, as well as to the people of the State, and of the United States.

Wherefore plaintiff in error earnestly and respectfully moves that the hearing of said cause be advanced.

ISAAC M. MASON,
Plaintiff in Error.

BENJ. SCHNURMACHER,
GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
Attorneys for Plaintiff in Error.

State of Missouri, } ss.
City of St. Louis. }

**ISAAC M. MASON**, being duly sworn, says he is plaintiff in error in the above cause; that he has read the foregoing motion, and that the matters therein stated are true; that it is not made for mere vexation, but in good faith and for the reason therein stated. He further says that said cause was first decided by the Supreme Court of Missouri, on March 13, 1900; that within the time given by the rules of said Court, he filed a motion for rehearing, which was decided adversely to him on the 27th of March, 1900; that as soon as counsel could make up the assignment of errors, and perfect a bond, affiant applied for writ of error to the Supreme Court of the United States, which was approved by the Chief Justice of theSupreme Court of the State of Missouri, on April 7, 1900, and plaintiff in error at once ordered a transcript of the record to be made up; that the same was not completed and submitted to his counsel for inspection until April 20, 1900, and that said counsel

did not complete examination of same until April 21, 1900, when it was transmitted to the Clerk of this Honorable Supreme Court of the United States, and is now on file therein.

ISAAC M. MASON,
Plaintiff in Error.

Subscribed and sworn to before me this 23d day of April, 1900.
My commision as Notary expires September 21 1900

Walter B. Dryden
Notary Public, City of St. Louis, Mo.

Office Supreme Court U.S.
FILED
OCT 5 1900
JAMES H. McKENNEY,
Clerk.

25571

No. 258.

By of Schnuermacher, Noble, Shields & Reynolds for P. C.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 258.

Filed Oct. 5, 1900.

ISAAC M. MASON, AUDITOR OF THE CITY OF ST. LOUIS, MISSOURI,
Plaintiff in Error.

vs.

THE STATE OF MISSOURI *ex rel.* JAMES McCAFFREY, LAWRENCE D. KINGSLAND AND GEORGE J. KOBUSH, RELATORS,
Defendants in Error.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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## ABSTRACT AND STATEMENT OF THE CASE, ASSIGNMENT OF ERRORS, AND BRIEF OF THE ARGUMENT FOR PLAINTIFF IN ERROR, WITH PRAYER FOR REVERSAL.

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BEN. SCHNURMACHER,
City Counselor.

JOHN W. NOBLE,
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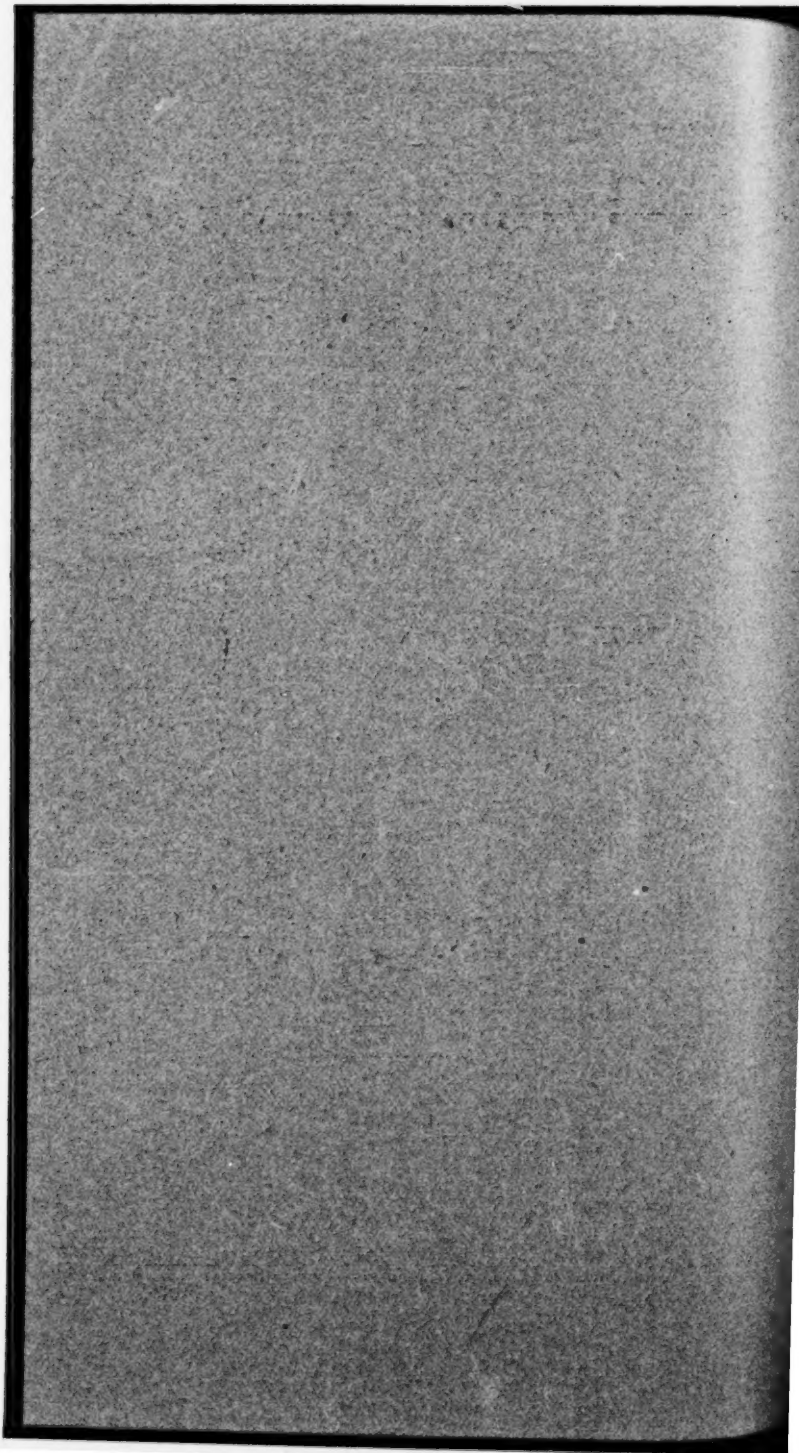

25572

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 258.

ISAAC M. MASON, AUDITOR OF THE CITY OF ST. LOUIS, MISSOURI,
Plaintiff in Error,

vs.

THE STATE OF MISSOURI *ex rel.* JAMES McCAFFERY, LAWRENCE D. KINGSLAND AND GEORGE J. KOBUSH, RELATORS,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

## ABSTRACT AND STATEMENT OF THE CASE FOR PLAINTIFF IN ERROR.

It is ordained by Section 5, Article 8, of the existing Constitution of Missouri, adopted in 1875, that "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants, and not exceeding 100,000, but not otherwise."

The same Constitution authorizes any city having a population of more than 100,000 inhabitants to frame a charter for its own government (Article IX., Section 16), and section 20 of the same Article specifically authorizes the City of St. Louis to frame and adopt a charter, for its own government "in harmony with and subject to the Constitution and Laws of Missouri." Section 22 ordains that such charter so adopted may be amended at intervals of not less than two years, by proposals therefor made by the law-making authorities of such city, and accepted by three-fifths of the qualified voters thereof voting at a general or special election; but such charter and amendments (Section 23) shall always be in harmony with and subject to the Constitution and Laws of Missouri.

Section 23 also ordains that the City of St. Louis "shall * * * perform all other functions in relation to the State, in the same manner as if it were a county, as in this Constitution defined."

Section 25 ordains that "Notwithstanding the provisions of this Article, the General Assembly shall have the same power over the City and County of St. Louis as it has over other cities and counties of this State."

Section 7 of Article IX. of the same Constitution ordains that "The General Assembly shall provide by general law for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general law, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions."

Under the provisions of the last named section, the General Assembly, at its first session after the adoption of the Constitution, provided by a general law, that all cities and towns in this State containing 100,000 inhabitants or more should be cities of the first class; all cities and towns containing 30,000, and less than 100,000, should be

cities of the **second** class; all cities and towns containing 3,000 and less than 30,000, should be cities of the **third** class; all cities and towns in the State containing 500 and less than 3,000 inhabitants, and all towns existing under any special law, having less than 500 inhabitants, should be cities of the **fourth** class. That provision for the classification of cities has remained a law ever since and is embodied in the Revised Statutes of the State. (Revision of 1899, as Sections 5252, 5253, 5254 and 5255.)

It is also ordained by Section 53 of Article IV. of the Constitution, that "The General Assembly shall not pass any local or special law * * * (2) regulating the affairs of counties, cities, townships, wards or school districts; * * * (11) for the opening and conducting of elections, or fixing or changing the places of voting; * * * (14) creating offices or prescribing the powers and duties of officers in counties, cities, townships, wards or school districts; * * * (32) In all other cases, where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such shall be judically determined without regard to any legislative assertion on that subject; nor shall the General Assembly indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special acts may be passed."

By Section 54 of the same Article it is ordained that: "No local or special law shall be passed unless notice of the intention to apply therefore shall have been published in the locality where the matter or thing to be affected may be situated. * * * The evidence of such notice having been published shall be exhibited in the General Assembly before such Act shall be passed, and the notice shall be recited in the Act according to its tenor."

The citizens of St. Louis, under the provisions of Sec-

tion 20 of Article IX. of the Constitution, above quoted, adopted a Charter in 1875 which, among other things, provided for registration and elections in that City. Registration and elections were there conducted under these Charter Provisions until 1883 when, by Act of March 31, 1883 (Laws 1883, page 38), the General Assembly passed an Act "For the registration of all voters in cities having a population of more than 100,000 inhabitants and to govern elections in such cities and to create the office of Recorder of Voters." This Act was attacked as unconstitutional because special, as relating solely to St. Louis, it then being the only city in the State with 100,000 inhabitants and over, and because embracing in its title and the body of the Act more than one subject, namely: registration and elections.

In the case of Ewing vs. Hoblitzelle, 85 Mo. 64, decided in October, 1884, the Supreme Court of the State declared this Act of 1883 constitutional, holding that as it applied to all cities then having or which thereafter should have over 100,000 inhabitants, it was but carrying out the mandatory provisions of Section 5 of Article VIII. of the Constitution.

This registration and election act of 1883 remained substantially the law of the State, governing registration and elections in cities containing 100,000 inhabitants and over, down to May 31, 1895. In the meantime Kansas City had acquired a population of over 100,000, and in the case of State *ex rel.* Attorney General vs. Dolan, 93 Mo. 467, decided in 1887, the Supreme Court held that the Act also extended over that city—the Courts in Missouri (see case last cited) taking judicial notice of the population of the cities of the State. These two cities, St. Louis and Kansas City, are the only ones in the State having more than 100,000 inhabitants, in which the law of 1895 has heretofore been operative, the former having about 575,000, the latter about 165,000. The Census Bureau has, however, recently announced the population of St. Joseph at 102,979; so that now the latter city is also to be classed in the cities of the first class, having over 100,000 inhabitants, and Spring-

field, Sedalia, and Hannibal, next in rank, having from 20,000 to 25,000 inhabitants. St. Louis is the only city in the State having over 300,000 inhabitants.

At a special session of the General Assembly, called for considering that matter along with two others, an act was passed, which was approved May 31, 1895, repealing this act of 1883 and its amendments, and enacting a new law governing registration and elections in cities "now having or which hereafter may have over 100,000 inhabitants." This act will be found bound with and at the end of the Session Acts of 1895. As subsequently amended it appears in Volume 2 of the Revised Statutes of Missouri for 1899, pages 1699 to 1736, both inclusive, Sections 7271 to 7360, both inclusive, being entitled "Article IX., Registration and Elections in Cities with 100,000 Inhabitants or Over." Down to August 20, 1899, it was in force without question in St. Louis and Kansas City.

At the regular session of the General Assembly of 1899, the Fortieth General Assembly, by act approved June 19, 1899, which act is called the "Cardwell law" (see Session Acts 1899, page 197), this act of May 31, 1895, was amended in two sections; namely, in Sections 2 and 91, of the original act, so as to make them as they now appear in Sections 7271 and 7360 of the Revised Statutes of 1899; the latter section relating simply to the pay of the various officers. Section 2 of the act of 1895, as amended by the "Cardwell law", is now Section 7271, and provides for the appointment of all three of the Election Commissioners by the Governor; whereas, as it was originally enacted, the Governor appointed two of them and the Mayor of the city appointed the third.

At this same session Representative Nesbit, a member of the House of Representatives of the Fortieth General Assembly, introduced a bill in that House under the following title: "An act to provide for the registration of voters in cities now having or which hereafter may

have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor; and to prescribe rules and regulations governing registration and elections therein."

This is the same bill introduced in evidence by Plaintiff in Error and marked "Respondents' Exhibit A," being House bill No. 760, as printed by order of the House (Transcript, page 35), and is copied in full in the Transcript at pages 62 to 81. It will be noticed that this bill provided for the appointment of **one** Election Commissioner for any city now or hereafter having over 300,000 inhabitants, and was framed throughout on a plan which put the whole control of registration and elections in each of such cities in this one Election Commissioner. This bill (House Journal, Transcript pages 37, and 145 to 149, "Respondents' Exhibit D"), went to engrossment in the House under the above title, but before being engrossed it was amended by striking out all of the bill after its enacting clause and inserting practically a new bill. It will also be noted that while the bill as engrossed contains the title of the bill as introduced, namely: "An act to provide, etc. * * * (and) to create the office of Election Commissioner, provide for **his** appointment and define **his** duties," etc., the body of the act provides for the appointment of "A Board of Election Commissioners," and is framed on the idea of a Board consisting of three members instead of a single officer, as originally provided for in the bill.

The amendment also added three new sections to the original bill, one (Section 47), providing that **the act of the majority of the Board** shall in all cases be considered the act of the Board; another (Section 48), that the Board shall audit all claims and draw a warrant therefor "upon the proper officer;" and another (Section 49), providing that "All acts and parts of acts inconsistent or in conflict with this act

are hereby repealed, and the act entitled 'An act to create a Board of Election Commissioners, etc., approved May 31, 1895,' is hereby repealed."

This engrossed bill is "Respondents' Exhibit B" and was introduced in evidence (Transcript, page 36), and will be found at length at pages 81 to 100 of the Transcript. It is the engrossed bill printed by order of the House for its use.

Afterward the bill, as so amended, **but under the original title,** was put on its passage in the House and passed exactly as appears in "Respondents' Exhibit B." After its passage in the House, its title was amended (see "Respondents' Exhibit D," page 148 of Transcript), so as to read as follows: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; **to provide for the creation of a Board of Election Commissioners;** provide for **its** appointment and define **its** duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, **and to repeal all Acts and parts of Acts in conflict or inconsistent herewith.**" The amendments to the original title made in the House are indicated by **black type.** That is, the bill, as it went to engrossment and was passed, had the original title under which it was introduced by Mr. Nesbit; but in the body of the bill, all that part of it following the enacting clause, was a new bill. It was ordered to engrossment under the original title and enacting clause, but with a new body, and was so passed by the House; after that, the title itself was amended, as above indicated, in the House.

It appears, affirmatively, as alleged in the return, by the Senate Journal, "Respondents' Exhibit C", Transcript pages 139 to 149, which was introduced in evidence as well as filed as an exhibit with the Respondents' return (Transcript, page 38), **that when the bill was received in**

**the Senate, read the first and the second time, referred to a committee, reported back adversley by the committee, read the third time, passed, received back from the House and signed by the President of the Senate in the presence of the Senate, it was under the title originally given the Nesbit bill,** namely: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; **to create the office of Election Commissioner,** provide for **his** appointment and define **his** duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

No act or bill, as shown by the Senate Journal ("Respondents' Exhibit C"), was ever before the Senate with the designation "House Bill No. 760" or with any other designation, under the title adopted by the House, namely, "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a Board of Election Commissioners, to provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Under this last mentioned title, however, it appears in the Session Acts of 1899, pages 179 and following, and was certified to by the Secretary of State as a true copy of the enrolled bill passed by the General Assembly and approved by the Governor, and was offered in evidence by the Defendant in Error (Transcript, pages 34 and 35), and is "Relators' Exhibit 1" (Transcript, pages 40 to 60), and it appears in Volume 2, Revised Statutes of 1899 (pages 1683 to 1699) as Sections 7222 to 7269, under the title "Article VIII., Registrations and Elections in cities with 300,000 inhabitants or over."

But to repeat, it appears affirmatively by the Journal of the Senate that no act under the last mentioned title was ever before that body, or any committee thereof, or ever received the signature of the presiding officer of the Senate. The only "House Bill No. 760" introduced by Nesbit in the House which was before the Senate being under the title that the bill originally bore when first introduced by Nesbit, and as appears in "Respondents' Exhibit A."

The Journals, under the Constitution and the decisions of the Supreme Court of Missouri, may be received in evidence and examined, to determine whether a law has been passed in accordance with the constitutional requirements, and these Journals are the best and highest evidence, controling the enrolled bill itself.

Douglas v. The Bank, 1 Mo 24;
State v. McBride, 4 Mo. 305;
State *ex rel.* v. Mead, 71 Mo. 266;
State v. Wray, 109 Mo. 594;
Wells v. Mo. Pac. R'way Co., 110 Mo. 286;
State *ex rel.* v. Field, 119 Mo. 593.

The officially printed bills are legal and competent evidence, 1 Rev. Stat., Mo., 1899, Secs. 3091 and 3093; and under the Constitution are as essentially a part of the legislative proceedings as the Journals themselves.

Constitution, Art. IV., Secs. 27 and 29.

Directly after this "Nesbit law" so-called was supposed to have gone into effect, the Governor, assuming to act under it, appointed three persons as members of the Board of Election Commissioners for the City of St. Louis, two belonging to one political party, one to another; whereupon two suits were instituted in the Circuit Court of the City of St. Louis, that being the court of general civil jurisdiction, against the appointees, being the same persons who are defendants in error in this suit and others. One suit was by Aloe and other citizens and taxpayers of St. Louis; and the other was by

Theo. C. Eggers, Circuit Attorney of the City of St. Louis. Both suits were by bills in equity, to restrain the appointees under the "Nesbit law" from taking possession of the office of Election Commissioners, or dispossessing the incumbents who were in office and appointed under the law of 1895, and to restrain the then incumbents from turning over the office and property in their possession to the new appointees. It was claimed that the so-called Nesbit law was an unconstitutional enactment, in violation of the Constitution of the State of Missouri and of the first section of the Fourteenth Amendment to the Constitution of the United States.

The defendants, McCaffery and others, who are respondents in this case, and who are appointees of the Governor under the Nesbit law, sued out writs of prohibition in the Supreme Court of the State against the Judges of the St. Louis Circuit Court and the plaintiffs in those cases, to prohibit that court from proceeding therein, they contending that that court had no jurisdiction over the subject matter, and that equity could afford no relief in in such cases.

Prohibitions were issued in both cases by the Supreme Court of the State, that court sustaining such contention; the decisions in the cases being reported in 152 Mo., the Aloe case at page 466, and the Eggers case at page 485.

The Governor's appointees, Defendants in Error in this cause, having taken office under the so-called Nesbit law, demanded of Plaintiff in Error, who is Auditor of the City of St. Louis, that he audit their accounts as Election Commissioners of the City of St. Louis and draw warrants therefor on the City Treasurer. Upon his declining to do so, the present action was instituted in the State Supreme Court by Defendants in Error, and a writ of mandamus prayed for from that court against Plaintiff in Error.

An alternative writ, or rule to show cause, was duly issued out of the Supreme Court of Missouri (Transcript,

pages 14 to 18) and served, to which Plaintiff in Error made return (Transcript, pages 19 to 33), on which issue was joined, the cause submitted to the court (Transcript, page 150), the rule made absolute, and the writ ordered issued (Transcript, page 151). A motion for rehearing was duly filed (Transcript, pages 165 to 170), which was overruled (Transcript, page 170); a writ of error was sued out and allowed by the Chief Justice of the State Supreme Court (Transcript, pages 1 and 171), who also signed the citation, which was duly served (Transcript, page 2); an assignment of errors (Transcript, pages 3 and 171) was duly filed and bond filed, which was approved (Transcript, pages 176 to 178) by the Chief Justice. Prayer for reversal (Transcript, page 2) was also filed.

The return of Plaintiff in Error, Respondent below, (Transcript, pages 19 to 33) admitted that the Relators claimed office under the so-called Nesbit act; avers that appointment under that is the only claim or color under which Relators claimed or assumed to hold office, and avers that the so-called Nesbit act is not, and never was, a valid law, because, as shown affirmatively by the Senate Journal, Exhibit "C," no act or bill under the title of the pretended act ever was in fact before the Senate for its consideration, or ever received the concurrence of the Senate, or ever was signed by the presiding officer thereof; because said act was not enacted, as provided by the Constitution of Missouri; because not passed by both Houses of the General Assembly; because, even if enacted in a constitutional manner, it is inconsistent and in conflict with various quoted provisions of the Constitution of that State; and because it is in conflict with the First Section of the Fourteenth Amendment to the Constitution of the United States, in that it denies to the citizens of the United States residing in the City of St. Louis, inhabitants of and within the jurisdiction of the State of Missouri, the equal protection of the laws.

The return also denied that the Municipal Assembly of the City of St. Louis had made any appropriation applicable to the payment of the salaries or expenses of the Commissioners appointed under the Nesbit law.

It was also claimed in the return that the only legal Election Commissioners for the City of St. Louis were those officers appointed under the Act of May 31, 1895; that said last-named act was and is the only constitutional enactment relating to registration and elections in cities of over 100,000 inhabitants in force in the city of St. Louis, and that it had not been repealed. and that the relators were not appointed and had no title to office under it, but that their title was solely under the invalid and unconstitutional Nesbit law.

A general denial was made to this return and testimony taken in behalf of both parties, by order of the Court, and returned to the Court.

Apart from certain stipulations made by counsel, the testimony was all documentary and is all in the Transcript, pages 34 to 151.

The Relators below, the Defendants in Error here, introduced a copy, certified by the Secretary of State, of what purported to be the original roll of the so-called Nesbit bill. This was "Respondents' Exhibit 1;" it also embraces certified copies of various certificates by the committee on enrollment and by the Governor, and of what is called a protest. It is on pages 40 to 60 of the Transcript. The title and body are the same as in Session Acts, 1899, page 179, before referred to, and the body the same as Chapter 102, Article VIII., in the Revised Statutes of 1899.

The Relators also introduced in evidence a certified copy of an ordinance of the Municipal Assembly of the City of St. Louis approved August 7, 1899, appropriating $75,849.25 for salaries, election expenses and office expenses of the Election Commissioners of the City of St. Louis.

25578



In passing and disposing of this feature of the case, we state that under the Constitution of the State of Missouri, Sec. 36, Art. IV., laws take effect, unless otherwise provided, in ninety days after the adjournment of the session of the General Assembly at which they were passed. The Fortieth General Assembly adjourned May 22, 1899; therefore, this Nesbit law, if a law, took effect August 20, 1899, it having no "emergency clause," and it was claimed by Plaintiff in Error that the appropriation made by the Municipal Assembly on August 7, 1899, was for salaries, expenses, etc., of the Election Commissioners appointed under the law of 1895, and was not available for those claiming appointment under the new law of 1899 which had not then, on August 7, 1899, gone into effect.

It was stipulated by counsel, for the benefit of Defendants in Error (Transcript, pages 150 and 151), that so much of the Journals of the Senate and House of the Fortieth General Assembly as contained the rules set forth and adopted by the two bodies for their government, and so much of Jefferson's Manual and Digest of Rules, etc., of the House of Representatives of the United States, prepared by N. T. Crutchfield, and adopted at the second session of the Fifty-third Congress, as relate to the amendments of titles be considered as introduced in evidence. As neither of these was, in point of fact, referred to, and no point made on them by Relators, further notice of them is omitted.

This was all the testimony of Relators below.

Respondent below, Plaintiff in Error, introduced the following bills, as printed for the use of the House and Senate, namely:

Exhibit "A" (Transcript, pages 35 and 62 to 81), being the original Nesbit bill.

Exhibit "B," the Nesbit bill as engrossed in the House and printed for its use. (Transcript, pages 36 and 81 to 100.)

Exhibit "E," House bill No. 760, as printed by order of the Senate. (Transcript, pages 36 and 100 to 117.)

Also the following documents:

Exhibit "F," a certified copy of the Nesbit bill, as certified to have been enrolled. (Transcript, pages 137 and 120 to 139.) This is identical, so far as the bill is concerned, with "Relators' Exhibit 1."

Exhibit "D" (Transcript, page 37), which "contains all the entries of the Journal of the House of Representatives of the Fortieth General Assembly of this State, which relate to House bill No. 760, also designated as the Nesbit bill, and the printed pages being pages 1673 to 1685, both inclusive, contained in said Exhibit 'D' contain all that appears in said Journal of date May 22, 1899, and said Exhibit 'D' may be used in evidence as if duly certified by the Secretary of State, the same consisting of pages from said House Journal as officially printed and published. This stipulation is made subject to whatever objection may be made thereto by Relators."

(The Exhibit will be found in the Transcript, pages 145 and following.)

Exhibit "C," being the same filed with Respondents' return in the cause, and being a certified copy from the Secretary of State of the Journal of the Senate of the Fortieth General Assembly of the State of Missouri, as far as it relates to House bill No. 760. (Transcript, page 38.) The Exhibit is on page 139 and following of the Transcript.

This was all the testimony introduced or offered by either party.

Defendants in Error, Relators below, objected to each of the foregoing Exhibits as introduced, and at the conclusion of the introduction of evidence, moved to strike them out.

The Court did not formally pass on these objections or motions. Its views as to them can only be gathered from the opinion.

The cause was argued and submitted to the Court on the pleadings, evidence and motions on February 8, 1900, and

on March 13, following, the Court awarded a peremptory mandamus (page 151), delivering an opinion in the conclusions of which six of the seven Judges composing the Court concurred, three of them dissenting as to part of it. One of the seven Judges of the Court is not recorded on one side or the other.

In brief, the opinion holds:

1st. That in the absence of a protest by members of the Senate, the objection made to a failure to observe constitutional requirements in the passage of a bill through the two houses cannot be inquired into by the Court.

2d. That in the case at bar, the only protest made to the Nesbit bill in its passage through the Senate, was on the ground that it was a special and not a general law, and that that was therefore the only objection the Court could consider in connection with its passage, and the Court, entering into an examination of this question, three of the Judges hold that while it was a valid objection, as decided by the Supreme Court in Murnane's case (Murnane v. City of St. Louis, 123 Mo. 479), that case, on the authority of the case of Kansas City v. Stegmiller, 151 Mo. 189, and the subsequent case of the State *ex rel.* Hawes v. Mason, 153 Mo. 23, was no longer authority. Three of the Judges dissented on this, the seventh Judge not taking any part in the decision, so that on this important point a majority of the Court did not concur. The Court failed to notice in any manner the contention of plaintiff in error that the Nesbit bill had never been read under its amended title, as shown affirmatively by the Journal of the Senate, and had never been before the Senate, or any of its committees under that title.

This, the main contention of Plaintiff in Error in the Court below against the constitutional enactment of the law, is passed over in the opinion of the Court in absolute silence.

The Court also failed to notice the contention of Plaintiff in Error, that no protest as to the change of title could possibly have been made by any Senator, for the Journal of the Senate shows affirmatively that but one title, and that the original one, was ever before the Senate, and that the title as amended by the House was never before the Senate.

3d. Noticing the contention that various other constitutional requirements had not been complied with, both as to manner of passage of the bill and the sufficiency of the title, the Court overrules them.

4th. At page 159, Transcript, the Court again takes up the contention of Plaintiff in Error, that the law violates Section 53 of Article IV. of the Constitution, "Because it is a local or special law; (2) regulating the affairs of counties, cities, etc.; (11) for the opening and conducting of elections, and fixing or changing the places of voting; (14) creating offices and prescribing the powers and duties of officers in counties, cities, townships, election or school districts; (32) passing of a local or special law where a general law can be applicable, and making it a judicial question, etc." And the Court says: "All of these objections are answered by the adjudication of Kansas City v. Stegmiller (151 Mo. 189) and State *ex rel.* Hawes v. Mason (153 Mo. 23), that St. Louis stands alone and that a law designating that city would be valid and a general law."

5th. Notice is then taken of the complaint that the law violates Sections 2, 5, 8, 10 and 12 of Article VIII. of the State Constitution. These provisions are also held not to been have violated.

6th. The opinion again takes up Section 5 of Article VIII. of the Constitution, requiring registration, and enters upon an argument to demonstrate the constitutionality of registration laws in general. As we made no con-

25580



tention to the contrary, we will not notice this any further.

7th. On page 160 of Transcript the Court takes up the contention of the Plaintiff in Error, that the law in question "deprives the citizens of the United States residing in the City of St. Louis of their right to the equal protection of the law, and imposes on citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office, and is null and void." The Court answers this objection by referring to the provisions of the registration laws of several States to show that it is as fair a law as that of Ohio, Kentucky, Illinois or Massachusetts.

8th. Resuming discussion of the question as to whether or not it is a law denying to citizens of St. Louis the equal protection of the laws guaranteed by the Frst Section of the Fourteenth Amendment to the Constitution of the United States, the opinion quotes from Mr. Justice Bradley in the case of Missouri vs. Lewis, 101 U. S. 31, as sustaining the right of the State to adopt any system of law or judicature it sees fit, for all or any part of its territory, and concludes by denying the contention of the Plaintiff in Error that the Nesbit law violates this section of the Fourteenth Amendment to the Constitution of the United States.

9th. The Court again notices the registration and election laws of Ohio, Illinois and Kentucky, for the purpose of calling attention to the fact that, in their general features, most of them appear to be designed for the same purpose, to-wit, that of preventing fraud and of making it more difficult to defeat the will of the people, as recorded, or as intended to be recorded at the polls, and it refers to the Nesbit law as one standing a fair comparison with the laws of the States named. Counsel on neither side referred to these laws.

10th. The Court holds that so far as relates to cities of 300,000 inhabitants or over, the Nesbit law repealed the law of 1895, and that it is not necessary for the Court, in this case, to discuss the effect on the law of 1895, of what is known as the "Cardwell act."

**Finally**, the Court holds that the appropriation made by the Municipal Assembly for the payment of Election Commissioners is available for the payment of Election Commissioners appointed under the Nesbit Law.

This opinion, written by Judge Sherwood, is concurred in **in toto** by Judges Burgess and Marshall; Judges Gantt, Brace and Valliant concurring in all except the remarks about the Murnane case, and saying in a separate opinion that the Murnane case involved a change of the Charter of the City of St. Louis in respect to municipal functions, and that it was therefore not in point in the present case.

Within due time, a motion for rehearing was filed in the cause, which assigned the following reasons:

1st. That questions decisive of the case and duly submitted by counsel have been overlooked by the Court.

2d. That the decision is in conflict with the provisions of the Constitution of the State of Missouri.

3d. That the decision is in conflict with the first section of the Fourteenth Amendment to the Constitution of the United States.

4th. That it is in conflict with decisions of the Supreme Court of the State of Missouri.

5th. That the law is in conflict with the first section of the Fourteenth Amendment to the Constitution of the United States.

6th. That the law and the decision deny to citizens of the United States, inhabitants of the City of St. Louis and within the jurisdiction of the State of Missouri, the equal protection of the laws.

This motion was overruled.

The Court holds that the law of May 31, 1895, is repealed as to cities of 300,000 inhabitants and over by the Nesbit law. This leaves the law of 1895 operative only in cities of 100,000 and up to 300,000 inhabitants, and gives us one law (the Nesbit) governing registration and elections in cities of over 300,000 population; and another (the law of 1895) governing cities of 100,000 and up to 300,000 population.

The act of 1895 is incorporated in the revision of 1899 by the revisors, who were all members of the General Assembly that passed the Nesbit act, and published and certified by the Secretary of State as an existing law governing cities containing a population of over 100,000 and not exceeding 300,000, as Article IX. of Chapter 102 of the Revised Statutes of 1899, and so is the Nesbit law also, as an existing law governing cities of 300,000 and over, and being Article VIII. of the same revision and Chapter. The revision was published after the opinion had been announced in this case.

Taking up our contention that the Nesbit law violates the provision of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it denies to the citizens of St. Louis the equal protection of the laws, we call attention to the provisions of the Nesbit law, to those of the act of May 31, 1895, and to certain penal provisions of the General Election Law of this State.

In citing the provisions of the Nesbit law, for the convenience of Court we refer to that law as contained in the Transcript (pages 40 to 59) as "Relator's Exhibit I," and being a copy of the act as certified by the Secretary of State. It is also contained in Volume 2, Revised Statutes of Missouri for 1899, at page 1683 and following, being Article VIII. of Chapter 102.

In referring to the law of May 31, 1895, and for brevity called the law of 1895, we cite from Volume 2 of the Re-

vised Statutes of Missouri for 1899, being Article IX. of Chapter 102 of that revision, and numbered Sections 7270 to 7369.

We quote in full or abstract such sections of the several laws as we consider material.

**Sec. 2. Nesbit Law. Appointment of Commissioners; and Sec. 47. Majority to govern.**

Section 2 of the Nesbit law (Transcript, page 41) provides for the appointment by the Governor of three Election Commissioners, one of whom shall belong to the "leading party politically opposed to that to which the Governor belongs." **This apparent division between the parties is nullified by Section 47** (Transcript, page 59), **which provides that the act of a majority shall in all cases arising under the act be considered as the act of the Board.**

**Law of 1895, Sec. 7271.**

The Act of 1895, as amended by the "Cardwell act" of 1899, also provides (Section 7271) for the appointment by the Governor of three Election Commissioners, one of whom shall be designated as Chairman, and one as Secretary, and the third one of whom shall be chosen from "three eligible citizens named by the City Central Committee of said leading party politically opposed to that to which the Chairman and Secretary belong." There is no provision that the act of the majority shall govern; on the contrary, see Sections 7271 and **7276,** *infra.*

**Sec. 3. Nesbit Law. Appointment of Deputy and Clerks,**

Section 3 of the Nesbit law (Transcript, page 41) authorizes the Election Commissioners to appoint and commission "one Deputy Election Commissioner, who shall hold his office during the pleasure of said Commissioners, and shall be vested with all the powers and duties of the Commissioners during their absence, sickness or inability to perform their duties; said Deputy Election Commissioner shall also be the Secretary of the Board of Election Commissioners." Such Commissioner shall have the "right and may employ additional

clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office."

Section 3 also provides: "The offices and Boards of Election Commissioners, as now constituted and existing in such cities to which this act applies, are hereby abolished, and the commission of such Election Commissioners is hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to cities named herein are hereby repealed." There is no provision anywhere in the law other than this for the vacation of offices in cities now having over 300,000 inhabitants, and no provision whatever for the vacation of offices in cities which shall hereafter contain a population of 300,000 and over.

**And Vacation of Former Offices.**

In the act of 1895 there is no provision for the appointment of a Deputy Election Commissioner, one of the Commissioners, as we have seen, being Secretary, and the provisions for the employment of clerks and assistants is as follows (Section 7271): "Said Board shall have the right to employ such additional assistants from time to time as may be necessary to promptly and correctly perform the duties of the office under the direction of the Board. **The Commissioner belonging to the leading party politically opposed to that to which the Chairman and Secretary belong shall appoint two assistants** who shall serve a term commencing thirty days before any election day and ending thirty days after said election day."

**Law of 1895. Sec. 7271.**

By Section 5 of the Nesbit law (page 42 of Transcript) the Election Commisssioners "and Deputy Election Commissioner shall have the power, and are hereby authorized to register any person or persons in said office of Election Commissioner, and re-register or transfer any person or persons who may have changed

**Sec. 5. Nesbit Law. Registration in Office.**

their residence from one ward to another ward, or from one precinct to another, in any ward at any time, excepting on such day or days on which a precinct registration may be held in said city, and except on such days as intervene between the completion of the registration herein provided and the next following election."

**Law of 1895.**

There is no such provision in the act of of 1895; under that act all registration being conducted in the several election precincts into which the city is divided.

**Sec. 8. Nesbit Law. Appointment of Judges and Clerks of Election.**

Section 8 of the Nesbit law (Transcript, page 43) provides that the Board of Election Commissioners shall, at least 60 days prior to the first city or state election after the act becomes a law (and every four years thereafter prior to the general elections), "select and choose four electors as judges of election for each precinct in said City. * * * Two clerks of election for each precinct shall also be selected within the same time by said Commissioners, who shall possess the same qualifications as the judges aforesaid. * * * Two of said judges and one of said clerks **shall belong to and be members of the party of opposite politics to the other two judges and clerks.**" We have noted that Section 47 (Transcript, page 59) provides that the act of the majority of the Board shall in all cases be considered as the act of the Board, so that the selection of all the judges and clerks is in the hands of the two represenatives of one party alone.

Sections 7276, 7277 and 7278 of the act of 1895 relate to the selection and appointment of judges and clerks of election.

Section 7276 provides that, "In the selection of the judges

and clerks of election, two judges and one clerk shall be selected from each of the two political parties of the State **polling the largest number of votes at the last general election,** to serve in each precinct, **who shall be recognized members of the party from which they are selected. The Commissioner, or Commissioners, shall select the judges and clerk to represent the party to which said Commissioner, or Commissioners belong;** and the person thus selected shall be appointed and commissioned by the Board, if qualified and confirmed." If a vacancy occurs it is to be filled in like manner as the original appointment.

**Law 1895. Sec. 7276. Selection of Judges and Clerks.**

Section 7277 requires the persons selected as judges and clerks to appear before the Board of Election Commissioners for examination as to their qualifications, and further provides that, "The judges and clerks shall be exempt from jury duty during the term of their service."

**Law 1895. Sec. 7277. Judges and Clerks Exempt from Jury Service.**

Section 7278 provides that as soon as the judges and clerks selected are found qualified, "a report of such selection shall be made and filed in the Circuit Court of the city or county, signed by said Commissioners, certifying that the provisions of this Article in regard to their selection and qualifications have been complied with, and designating the particular political party from which each judge or clerk is appointed, and an application in writing shall be therewith made by said Commissioners before said Court for the confirmation of said appointments, whereupon the Circuit Court, or a Judge thereof, shall enter an order that

**Law 1895. Sec. 7278. List of Judges and Clerks to be Filed in Court,**

cause be shown, if any exists, against the confirmation of the appointment of any person so selected as judge or clerk before the opening of court on a day to be fixed by the Court or said Judge." Notice of the order and the names, residences, precincts and politics of the parties so appointed and of the date of hearing of objections are to be published in newspapers of the city, and on the day designated any persons desiring to object to any of the judges or clerks selected may present such objections and they and the parties objected to are heard in a summary manner before the Court, and if the objections are sustained the Election Commissioners are required to name others in their stead, who may again be objected to until satisfactory parties are selected, the Court confirming by a *pro forma* order all appointments made by the Election Commissioners against whom no objections have been filed, or against whom objections have not been sustained.

**And Notice of Filing Published and Objections to Names Heard in Court.**

**No provisions whatever of a like character are in the Nesbit law, the only section relating to their appointment and qualifications being Section 8, above referred to.**

It is to be noted again in this connection that Section 47 of the Nesbit act (Transcript, page 59) provides that "The act of the majority of such Board of Election Commissioners shall in all cases arising under this act be considered as the act of said Board of Election Commissioners, so that practically the Nesbit act abolishes the bi-partisan character of the Board, reposes the appointment of judges and clerks in the arbitrary discretion of the two members of the Board who are of the same political party, does not require two of the judges and one of the clerks to be of "the leading party politically opposed" to the other two, but simply that they shall be "members of the party of opposite politics" to the other two judges and clerk; does not

25584



extend exemption from jury service to the judges and clerks during their term of service, does not give the citizens of the precincts and wards any opportunity to be heard either before the Board or the Court, or any other person, body or tribunal, as to the persons selected, but leaves that whole matter to the arbitrary discretion of a majority of the Board, or, in their absence, with their Deputy; nor is any publication made of the judges and clerks selected.

**Judges and Clerks Act as Registration Officers.**

Both laws provide that the judges shall act as registering officers and the clerks as canvassers of the registration lists in their several precincts.

Both laws also provide for registration in the several precincts and for canvassing of the registration therein by the judges and clerks of the several precincts, acting as a Board of Registration, on the three days when registration is provided to be had in the precincts, namely: on the Tuesday four weeks before the general election; on the Saturday following said Tuesday; and on the Tuesday following that Saturday; the said last named Tuesday being the third Tuesday before the election; (all State elections in Missouri being held on the Tuesday following the first Monday in November, and all City elections on the first Tuesday in April); the last day of registration in the precincts being the third Tuesday before the election.

**Registration in Precincts.**

This is the only registration provided for under the law of 1895, as before noted, whereas, as already noted, Section 5 of the Nesbit law provides for registration at the general office of the Board of Election Commissioners in the City Hall, at all times, except on such days as registration is being conducted in the precincts, and on the days following the close of registration in the precincts and the day

of the ensuing election. But, as will be noted hereafter, by other provisions in Section 21 of the Nesbit law (Transcript, page 50), the Board of Election Commissioners are allowed, on the Thursday, Friday and Saturday of the week immediately prior to the week in which the general election is held, sitting as a Board of Appeals, to register as qualified voters such persons as may make application, who had failed to appear before the precinct Board of Registration "because of sickness, forgetfulness, absence from the city or other reasonable cause," at the time of precinct registration.

**Sec. 21. Nesbit Law. Registration by Board.**

So that, taking Sections 5 and 21 of the Nesbit Law together, registration can be conducted at the general office of the Board of Election Commissioners in the City Hall, at all times, **except** on the Tuesday four weeks before the general election, on the Saturday following that Tuesday and on the Tuesday following that Saturday (which last mentioned Tuesday is the third Tuesday before the election), **and except** between that Tuesday and the Thursday immediately preceding the election. At all other times, down to and even including the Saturday immediataly preceding the election, registration can be conducted at the general office of the Election Commissioners in the City Hall, by the Board, by their Deputy and by their clerks, the majority of the Board controlling, and the Deputy and all the clerical force of the office being appointees of the majority, and there being no provision whatever for challenging the registration nor any check or scrutiny whatever of the acts of the Board or its partisans.

**Secs. 5 and 21, Nesbit Law— Registration by Board.**

There is no such provision in the Act of 1895, all registration being made under that law by the Precinct Boards of Registration in each voting precinct, at which representatives of all parties may be present and challenge, and registration closing therein on the third

**Law of 1895— Registration in Precincts.**

Tuesday before the general election, between which date and the election there can be no new names added to the registration.

The Nesbit law (Sections 9 to 21) provides for the registration in precincts by the Precinct Boards and a canvass of that registration by the precinct clerks under the direction of the Precinct Board.

At the completion of this canvass by the clerks they are required to mail notices as well as leave them at the address given, and, if possible, serve them personally on such persons as are thought to be improperly entered on the registration list, and on the Saturday following the Tuesday three weeks preceding election, the Board of Registration of each precinct meets at the place designated in the precinct and checks up the registration list with the report of the canvassers, and if, during the last hour of that day's session, any person notified to appear shall not appear and show cause why his name should not be erased from the register, his name shall be erased. At this session any voter of the ward may apply to the Board to have any name upon such registry of any precinct erased, of which application he shall give the person whose name he seeks to erase, **in writing or otherwise,** at least one day's notice before the day of said session. If the person objected to does not appear, his name is erased.

**Sec. 21, Nesbit Law—Appeals to Board.**

The only appeal allowed under the Nesbit law is by a person whose name has been erased or refused registration; this is given by Section 21, and the appeal is to the Board of Election Commissioners **alone.** The Election Commissioners, on Thursday, Friday and Saturday of the week preceding the election, sit as a Board of Appeal to hear such applications and appeals as shall be made to be placed upon the registry of voters of any particular precinct "of persons who applied for registration and were refused by the Board of Registration, or had

their names stricken from the registry by said Board." There is no right of appeal, even to the Board, by citizens who have challenged or desire to challenge the unlawful registration of a name or names by the precinct registers; nor is the right of appeal given to anyone from the action of the Board of Election Commissioners to any court, body or tribunal whatsoever.

**Sections 7288 to 7300, Law 1895. Appeals to the Board and Court.**

The law of 1895 (Sections 7288 to 7300) provides for registration in the precincts of the several wards. Any citizen of a ward may, by presenting a verified protest, challenge the right of any person to register, whose name appears on the list. The clerks act as canvassers, as in the other law, and at the close of the registration, the Board of Election Commissioners sit (Section 7298) to hear applications for erasure of any name on the registry, and to hear appeals from any action of the Precinct Boards of Registration in refusing registration to any one claiming the right to register. The Board of Election Commissioners, as a preliminary Board of Appeal, are to decide all such questions forthwith, and are to make up a docket of their action, showing all cases before them that have been stricken from the lists, refused registration, or registered on appeal, and on the Friday and Saturday of the week prior to the week in which the election is held (see Sections 7299 and 7300) the Circuit Court of the city with this docket before it, filed with it by the Election Commissioners, sits in special term to hear all appeals from the action of the Board of Election Commissioners in refusing to erase from or in refusing to restore to or place any names on the registration lists, and any person desiring to appeal from the judgment of the Circuit Court is given the right of appeal to the Supreme Court, or Court of Appeals, as the case may be.

**Sections 7299 and 7300, Act 1895. Hearing in Court.**

As will be noticed, the Nesbit law gives no such right of appeal to the Courts, confining the right of appeal to the Board of Election Commissioners, and then only in cases in which the Precinct Board of Registration refused to register a party. It grants no appeal whatever to any one, to any body, tribunal or court from the action of the Precinct Boards of Registration, or from the action of the Board of Election Commissioners itself, in the matter of adding names to the registration list, the addition of new names to the registration list under the Nesbit Law being left solely within the power and arbitrary, uncontrolled discretion of the Board of Election Commissioners itself, that body determining **all questions** by majority vote.

**Section 21, Nesbit Law. Board May Register.**

Section 21 of the Nesbit law (Transcript, page 50) furthermore provides: "Said Board of Appeals" (that is to say, the Board of Election Commissioners sitting as a Board of Appeals on the Thursday, Friday and Saturday of the week immediately prior to the week in which the general election is held) "may also register as qualified voters such persons as may make application, who failed to appear before the Board of Registration (in the precincts) because of sickness, **forgetfulness**, absence from the city, or other reasonable cause at the time of precinct registration." The law provides no canvassing whatever of this additional registration, conducted unchallenged and uninspected practically down to the very day of election, in the office of the Election Commissioners by their appointee, Sunday only intervening. Other sections of the law provide that on Monday the registration and poll books are to be delivered to one of the Judges of Election in each precinct, and consequently there is no opportunity whatever for any parties outside of the Board of Election Commissioners themselves and their clerks and appointees to know who are

the registered voters when the polls open on the day of election, and there is no check whatever to prevent the Board of Election Commissioners, or their Deputy and appointees, from adding hundreds or even thousands of new names to the registration on the three days immediately preceding the election, and no provision whatever for canvassing or verifying the names so added, and no means whatever provided for the publication of the new names added or of names stricken off.

**Nesbit Law.— No Canvass of Registration by Board.**

The law of 1895 admits of no such scheme, nor of anything like it.

The provisions of the two laws for the conduct of the election itself are so much alike that it is unnecessary to call attention to them, and under both laws the Board of Election Commissioners are made the canvassers of the returns of the election.

**Both Laws.— Conduct of Elections.**

Sections 39 to 44 of the Nesbit law (Transcript, pages 57 and 58) are the only sections of that law prescribing punishments and penalties for and defining what are offenses committed in connection with registration and elections.

**Frauds in Registration, and Penalties.—Nesbit Law.**

Section 39 is the only one in that law relating to frauds in connection with registration. It enacts that any person

"Upon conviction, shall be adjudged guilty of a felony and **punished in the penitentiary** not less than two years: who shall impersonate an elector, or other person, or register or attempt to offer to register the name of such elector or other person;"

Or who "Shall fraudulently register, or offer, or attempt to register in or under the name of any other person, or in or under any assumed or fictitious name, or in or under any name not his own;"

Or "Who shall register in two election precints;"

Or "Having registered in one precinct, shall attempt to register in another;"

Or "Shall knowingly, by false personation or otherwise cause or procure, or attempt to procure the name of any qualified voter in any election precinct, to be erased or stricken from any registry of voters of such precinct made in pursuance of this act or otherwise as in this act provided;"

Or "Who by force, threat, menace, intimidation, bribery, reward, or offer or promise thereof, or other unlawful means, prevents, hinders or delays any person having a legal right to register or to be registered, from duly exercising such right; "

Or "Who shall solicit, counsel, or induce by unlawful means, any officer of registration to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious name, or any name of any person except as provided in this act."

These are all the offenses against registration denounced by the Nesbit law, and, as before stated, the person committing them "shall, on conviction, be adjudged guilty of a felony and **punished in the penitentiary** not less than two years."

Under this section, the offender convicted, if punishable at all, is to be punished in the penitentiary for not less than two years; he may be punished for life.

**Frauds in Registration and Penalties.—Law of 1895.**

In the law of 1895, Section 7234, is the one which defines offenses connected with registration under that law, and it enacts that any person convicted of any of them "shall be adjudged guilty of a felony, and shall be punished **by imprisonment** in the penitentiary for **not less** than two **nor more** than five years."

The offenses connected with registration enumerated in Section 7234 of the law of 1895 are:

"Falsely impersonating an elector or other person, and registering or offering to register in the name of such elector or other person;"

Or "Knowingly or fraudulently registering or offering or attempting to make application to register, in or under the name of any other person, or in or under the name of any false, assumed or fictitious name, or in or under any name not his own;"

Or "Knowingly or fraudulently registering in two election precincts;"

Or "Having registered in one precinct, fraudulently, attempting or offering to register in another, or fraudulently registering, or attempting or offering to register in any election precinct, not having a lawful right to register therein;"

Or "Knowingly or wilfully doing any unlawful act to secure registration for himself or any other person;"

Or "Knowingly, wilfully or fraudulently, by false representation or otherwise, or by any unlawful means, cause or procure, or attempt to procure the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, in pursuance of the law or otherwise, as in the act provided;"

Or "By force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, preventing, hindering or delaying any person having a lawful right to register, or to be registered, from duly exercising such right;"

Or "Knowingly, wilfully or fraudulently soliciting, compelling or inducing, or attempting or offering to solicit, compel or induce, by such means, or any unlawful means, any judge of election, or other officer of registration in any election precinct, to register or admit to registration any person not lawfully entitled to registration in such precinct;"

Or "To register any false, assumed or fictitious name, or any name of any person, except as provided in the Act;"

Or "Knowingly or wilfully or fraudulently interferring with, hindering or delaying any judge of election, or other

officer of registration, in the discharge of his duties, or counsel, advise, or induce, or attempt to induce, any such judge, or other officer, to refuse or neglect to comply with or to perform his duties, or to violate any law prescribed for regulating the same;"

Or "Who shall aid, counsel, procure, solicit or advise any voter, person, judge of election, or other officer of registration, to do any act by law forbidden, or in this act constituted an offense, or to omit to do any act by law directed to be done;"

Or "Being a judge or clerk of election, shall at any registration of voters, knowingly and wilfully misspell the name of any person who applies to register, when he writes said name on the register book, or who writes therein a name other than the name given him by the applicant instead of said name, or shall under the column 'Residents' on the line with any applicant's name, enter any street or number other than that given him by said applicant, or shall fail or neglect to enter in said column the street and number designated by the house or room as given him by said applicant."

**Frauds at Elections, and Penalties.—Nesbit Law.**

Section 40 of the Nesbit law is the only one in that act relating to offenses committed at elections. It provides that any person, upon conviction, shall be held guilty of a felony, and punished for every such offense by imprisonment in the penitentiary **not less than two years:**

"Who shall falsely impersonate an elector or other person, and vote, or attempt or offer to vote, in or upon the name of such elector or other person;"

Or "Shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own;"

Or "Shall knowingly, wilfully or fraudulently, vote more than once for any candidate for the same office, except as authorized by law;"

Or "Shall vote, or attempt or offer to vote, in any elec-

tion precinct without having a lawful right to vote therein, or vote more than once, or vote in more than one election precinct, or, having voted once, shall vote, or attempt to vote again;"

Or "Shall knowingly, wilfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote;"

Or "Shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote;"

Or "Prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage;"

Or "By any such means induce, or attempt to induce, any such voter to exercise any such right."

The punishment here is imprisonment for not less than two years; it may be for life.

**Frauds at Elections, and Penalties.—Law of 1895.**

In the act of 1895, Section 7335, is the one defining offenses at elections, making them fellonies punishable by imprisonment in the penitentiary for **not less than two nor more than five years.** The penalties in this section are against any person who

"Shall falsely impersonate any elector, or other person, or vote or attempt or offer to vote in or upon the name of such elector or other person;"

Or "Shall vote or attempt to vote in or upon the name of any other person, whether living or dead, or in or upon any false, assumed of fictitious name, or in or upon any name not his own;"

Or "Shall knowingly, wilfully or fraudulently vote more than once for any candidate for the same office, except as authorized by law;"

Or "Shall vote or attempt or offer to vote in any election precinct without having the lawful right to vote therein;"

Or "Vote more than once, or vote in more than one elec-

tion precinct, or, having once voted, shall vote or attempt or offer to vote again;"

Or "Shall knowingly, wilfully or fraudulently do any unlawful act to secure a right or an opportunity to vote for himself or for any other person to vote;"

Or "Shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof; or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote;"

Or "Prevent or hinder or attempt to prevent or hinder any qualified voter from freely exercising the right of suffrage;"

Or "By any such means induce, or attempt to induce, any voter to exercise any such right;"

Or "Who shall, by any such means, or otherwise, compel or induce, or attempt to compel or induce, any judge of election, or other officer, in any election precinct, to receive the vote of any such not legally qualified or entitled to vote at said election in said precinct;"

Or "Shall knowingly, wilfully or fraudulently interfere with, delay or hinder in any manner any such judge of election, poll clerk, or other officer of election in the discharge of his duties;"

Or "By any such means, or other unlawful means, knowingly, wilfully or fraudulently counsel, advise, induce or attempt to induce any judge of election, poll clerk or other officer of election whose duty it is to ascertain, proclaim or announce the result of any such election, to give or make any false certificate, document, report, return or other false evidence in relation thereto;"

Or "To refuse or neglect to comply with his duties or to violate any law regulating the same, and to receive the vote of any person in any election precinct not entitled to vote therein, or to refuse to receive the vote of any person entitled to vote therein;"

Or "Shall aid, counsel, advise, procure or assist any voter, judge or other officer of election, or any person whomsoever, to do any act by law forbidden, or in the act constituted an offense."

**Frauds at Elections, and Penalties.—General Statutes.**

The General Statutes of the State, under the head of "Crimes and Punishments" (see Vol. 1, Revised Statutes, 1899, Chapter 15, Article VI. page 597), contain the general law on the subject of intimidation of voters, and Section 2110 is as follows:

"If any person by menaces, threats, force, or by any other unlawful means, either directly or indirectly, attempts to influence any qualified voter in giving his vote, or to deter him from giving the same, or disturb or hinder him in the free exercise of his right of suffrage at any election held under the Constitution or law of this State, the person so offending shall, on conviction thereof, **be adjudged guilty of a misdemeanor.**"

Under the same chapter (Section 1990), it is enacted that

"Every person who shall be convicted of a misdemeanor as prohibited by this chapter, the punishment for which if not herein prescribed, shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding $500, or by both such fine and imprisonment."

Section 2111 of the same Article and Chapter of the General Statutes provides that;

"Any person who designedly gives a printed or written ticket to any qualified voter in this State, containing written or printed names of persons for whom said voter does not design to vote, for the purpose of causing any such voter to poll his vote contrary to his own wishes, shall, on conviction, be adjudged guilty of a misdemeanor."

While Section 7345 of the Act of 1895 makes this a felony punishable by not less than two nor more than five years imprisonment in the penitentiary.

And Section 2111 of Article VI., Chapter 15, of the General Statutes, provides that

"Every person who shall, at any election held in pursuance of the laws of this State, or of any city or other

municipality thereof, vote more than once, either at the same or a different place, or shall knowingly cast more than one ballot, or shall vote at any such election, knowing that he is not qualified as a voter and is not entitled to vote, or every person who shall knowingly advise or procure any person to vote, who is not entitled to vote, or who shall knowingly advise or procure any illegal vote to be cast at any such election, shall be deemed guilty of a felony and, upon conviction, shall be imprisoned in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine not exceeding $50; or by both such fine and imprisonment."

And Section 2115 of same Chapter and Article of the General Statutes provides that

"Every person who shall attempt to vote at any election held in pursuance of the laws of this State in any city or municipality thereof, knowing he is not entitled to vote at such election, shall be deemed guilty of a misdemeanor."

**Offenses of Officers.—Nesbit Law.**

Section 41 of the Nesbit law provides that every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer authorized to take part in or perform any duty in relation to any canvass, or furnish statement of the vote cast at any election in any precinct or in any city, who shall make any false canvass of such votes, or shall make, sign, publish or dedeliver any false return of such election, or any false certificate or statement of result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction, be adjudged guilty of a felony and punished by imprisonment in the penitentiary for not less than two years. No limitation, or maximum, is fixed.

**Offenses by Offfcers.—Law of 1895.**

Sections 7336, 7337 and 7338 of the law of 1895 make the same acts when done by any officer connected with regis-

tration or elections, or the canvassing of returns, as well as any officer committing any one of numerous other acts specified in the sections, on conviction, guilty of a felony punishable by imprisonment in the penitentiary for not less than two nor more than five years.

**Offenses by Officers.—General Statutes.**

Sections 2116 and 2117 of the Revised Statutes, being a part of the general law, in Chapter 15, Article VI., before referred to, which cover frauds and offenses by judges and clerks of election, and other persons connected with the election, or in relation to the count of the ballot, or the canvass of the result of the election, upon conviction, liable to punishment "by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not less than three months and by a fine not less than $100, or by both such fine and imprisonment, and shall also be forever prohibited from voting at any election and from holding any office or position of trust or emolument under the authority of this State or any department thereof, or of any county, city or town therein, either by election or appointment, or as clerk or employe," while Section 2118 makes it a misdemeanor for judges and clerks of election to wilfully neglect or refuse or omit to perform any duty enjoined or required of them by law.

**Offenses under Nesbit Law and Law of 1895.**

Section 42 of the Nesbit law (Transcript, page 58) punishes any person, other than the judge of election, for putting fraudulent ballots in the ballot box, or putting any ballots therein not voted by lawful voters, or removing any lawful ballots, defacing any ballots, by imprisonment in the penitentiary not exceeding two years, while Section 7342 of the law of 1895 makes the same offenses punishable by imprisonment in the penitentiary for not less than two nor more than five years.

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In general, the law of 1895 denounces many more acts against the elective franchise than does the Nesbit law, making some of them felonies punishable by imprisonment in the penitentiary for a term of not less than two nor more than five years, some of them by imprisonment in the county or city jail, or by fine, or both, whereas, the Nesbit law makes all of them felonies, punishable by imprisonment for not less than two years, and without limitation as to maximum punishment, except breaches of the peace and disorder at the polls, or electioneering at the polls, which are made misdemeanors and punishable by imprisonment for not less than thirty days nor more than one year in some cases, in others by imprisonment not less than ten nor more than ninety days, or by fine not less than $50 or more than $100, whereas, the General Statutes do not make these offenses at all.

We have thus, as we think, quoted in full, or given a fair abstract of such sections of the several laws as we deem material to this case.

On these facts, and on the law, Plaintiff in Error claims that he is entitled to a reversal of the judgment of the Supreme Court of the State of Missouri, and for that he prays.

## ASSIGNMENT OF ERRORS.

I.

The act of the General Assembly of the State of Missouri, entitled "An act to provide for the registration of voters in cities now having or which may hereafter have 300,000 inhabitants or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment, and define its duties; to govern elections in such cities, defining offenses, and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19, 1899, is in conflict with the First Section of the Fourteenth Amendment to the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States, and denies to citizens of the United States within the jurisdiction of, and citizens of the State of Missouri, the equal protection of the laws.

II.

Said Act of June 19, 1899, denies to citizens of the United States who are inhabitants and citizens of the City of St. Louis, and within the jurisdiction of the State of Missouri, the equal protection of the laws.

III.

The decision of the Supreme Court of the State of Missouri in the above entitled case, in sustaining said act of June 19, 1899, as a valid and constitutional enactment, is a denial to the citizens of St. Louis and of this Plaintiff in Error, who are within the jurisdiction of the State of Missouri, of the equal protection of the laws, and of their privileges and immunities as citizens of the United States.

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VII.

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VIII.

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IX.

The Court erred in refusing to hold that Section 9 (5) of Article VIII. of the Constitution of the State of Missouri prescribed the methods under which registration laws could be passed in the State of Missouri as being mandatory, and directing the only method by which said registration laws could be passed.

X.

The Court erred in refusing to hold that the limitations of Section 5 of Article VIII. of the Constitution of the State of Missouri limited the Legislature to passing a general act for the registration of voters in all cities having over 100,000 inhabitants.

XI.

The Court erred in refusing to hold that Section 5 of Article VIII. of the Constitution of the State of Missouri created a constitutional classification in cities and counties for registration purposes: (1) into cities and counties of over 100,000 population, without regard to the maximum limit in which cities and counties there must be registration; (2) cities of over 25,000 and under 100,000 population, in which there may be registration; and (3) the rest of the State, in which there shall be no registration; and

that said section was a mandatory rule controlling the action of the Legislature and requiring it to pass general laws on the subject of registration applicable to all cities in the State containing over 100,000 inhabitants.

XII.

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XIII.

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XIV.

The Court erred in holding that in the face of Section 5 of Article VIII. of the Constitution of Missouri the Legislature could make special laws for registration purposes applicable to the City of St. Louis, having 300,000 or more inhabitants, alone.

XV.

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XVI.

The Court erred in holding that the "Nesbit bill" repealed the act of May 31, 1895, so far as regards cities covered by said "Nesbit bill," and having more than 300,000 inhabitants, leaving the act of May 31, 1895, in force as to cities having 100,000 inhabitants or more, up to 300,000 inhabitants, thereby creating a different rule of registration as to some of the cities in the State of Missouri having over 100,000, from the rule of registration prescribed for the City of St. Louis.

XVII.

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XVIII.

The Court erred in holding that the act of May 31, 1895, was repealed so far as concerns the "Nesbit act," thereby holding that said act of May 31, 1895, as amended

by the "Cardwell act," applies to cities of over 100,000 and up to 300,000 inhabitants, in face of the fact that this ruling is contrary to the First Section of the Fourteenth Amendment to the Constitution of the United States, plead in the returns of the Respondent and urged by his counsel in their brief and on oral argument, and again presented to the Court on a motion for rehearing herein, for the reason that by Section 9 of the act of May 31, 1895, judges and clerks of election are to be appointed by a Board of Election Commissioners and reported to the Circuit Court of the State for confirmation, with the right to any interested citizen to file objection to such judges and clerks, which objections were to be heard and determined by the Court on a day fixed for that purpose, whereas by Section 8 of the Nesbit act the Board of Election Commissioners are empowered to appoint four judges of election and two clerks, without any supervision whatever, and with no right to the citizens of St. Louis to object thereto or to be heard thereon before any court or judicial body; and, further, that Section 31 of the act of May 31, 1895, makes provisions for any voter whose name is refused registration or who is stricken from the registration list to apply to the Circuit Court for reinstatement or registration, which application is to be heard summarily and determined by the Court, and if found qualified the name is placed upon the registry list, and if refused the applicant is given the right of appeal to the Supreme Court or the Court of Appeals of the State; whereas, under the Nesbit act, by Section 21, the Board of Election Commissioners is made the Board of Appeal to hear applications for reinstatement and registration, and no appeal whatever to the Courts is provided, and every citizen of St. Louis is denied his day in Court; all of which is contrary to the said Fourteenth Amendment to the Constitution of the United States; and, further, that other differences between the said Nesbit act and

the Act of May 31, 1895, apparent upon comparison of the two acts, will show that the citizens of cities and counties of the State of Missouri having 300,000 or more inhabitants, are denied equal protection by the laws provided for cities having 100,000 up to 300,000, and their privileges and immunities as citizens of the United States are abridged, notwitstanding the provisions of Section 5 of Article VIII. of the Constitution of Missouri, providing for registration in cities and counties having a population of over 100,000, and notwithstanding Section 3 (53) of Article IV. of the Constitution of Missouri, providing that in all other cases where general laws can be made applicable no local or special law shall be enacted, and whether the general law could have been made applicable in any case is declared to be a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject.

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XXIII.

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XXIV.

The Court erred in overruling the motion for rehearing filed by Plaintiff in Error, which should have been sustained for the reasons in said motion for rehearing set out.

## POINTS AND AUTHORITIES.

I.

A Federal question is raised in the return, motion for rehearing, and assignment of errors.

Session Acts Mo. 1895, pp. 5 to 43, inclusive;
Rev. Stat. Mo. 1899, vol. 2. p. 1443 *et seq.*;
Nesbit Act, Session Acts Mo. 1899, p. 179;
Constitution of Mo., Art. VIII, Sec. 5;
Kentucky R. R. Tax Cases, 115 U. S. 321–336;
Bell's Gap R. R. v. Pennsylvania, 134 U. S. 232–6.
Dewey v. Des Moines, 173 U. S. 193.

II.

A Federal question arises on the decision of the State Supreme Court.

Virginia v. Rives, 100 U. S. 313–318;
*Ex parte* Virginia, 100 U. S. 339–346;
Constitution of Mo., Art. VIII, Sec. 5;
Constitution of Mo., Art. VIII, Sec. 2.

III.

On this question the United States Supreme Court is not bound by the State Court.

Yick Wo v. Hopkins, 118 U. S. 356–65;
Atchison, etc., Co. v. Mathews, 174 U. S. 96;
Carter v. Texas, 177 U. S. 422–47;
Boyd v. Thayer, 143 U. S. 135;
Taylor v. Beckham, advance sheets of opinions of Supreme Court U. S., No. 16, p. 891.

IV.

The Fourteenth Amendment protects the right of suffrage and requires equal protection of the laws.

Yick Wo v. Hopkins, 118 U. S. 356, 370, 373;
State *ex rel.* v. Conner, 22 Neb. 265;
State *ex rel.* v. Tuttle, 53 Wis. 45;
Kinser v. Wells, 144 Mass. 497;

Monroe v. Collins, 17 Ohio St. 666;
State *ex rel.* v. Williams, 5 Wis. 308;
Page v. Allen, 58 Pa. St. 338;
Payne on Elections, Sec. 340;
U. S. v. Cruikshank *et al.*, 92 U. S. 542–54–55;
*Ex parte* Yarbrough, 110 U. S. 651–65;
Barbier v. Connolly, 113 U. S. 27–31;
Holden v. Hardy, 169 U. S. 366–389;
Maxwell v. Dow, 176 U. S. 581;
*In re* Kemler, 136 U. S. 436–48.

V.

The Nesbit law denies equal protection of the laws as to registration and elections, in that it is unfair and partisan.

It is unequal as to punishments.

State v. Walsh, 36 Mo. 400–7;
State v. Thomas, 138 Mo. 95;
State v. Burkhardt, 144 Mo. 83;
*In re* Jilz, 3 Mo. App. 243;
Owen v. Baer, 55 S. W. Rep. 650;
Pace v. Alabama, 106 U. S. 16;
Caldwell v. Texas, 137 U. S. 691.

VI.

The Nesbit law is unconstitutional because it contravenes the classification of Article VIII., Section 5 of the State Constitution and denies equal protection of the laws.—Rules of Construction.

Mo. Constitution, Art. VIII, Sec. 5;
Ewing v. Hoblitzelle, 85 Mo. 64–72;
Kansas City, etc., v. Scarritt, 127 Mo. 642.

(*a*) The whole instrument will be considered.

Wilcox v. People, 90 Ill. 186;
Morley v. State, 7 Mo. 135;
Lastro v. State, 3 Tex. App. 363;
Rasmussen v. Baker, 50 Pa. 819;
Endlich on Statutes, Sec. 533;
Cooley Const. Lim., p. 78;

Monroe v. Collins, 17 Ohio St. 666;
State *ex rel.* v. Williams, 5 Wis. 308;
Page v. Allen, 58 Pa. St. 338;
Payne on Elections, Sec. 340;
U. S. v. Cruikshank *et al.*, 92 U. S. 542–54–55;
*Ex parte* Yarbrough, 110 U. S. 651–65;
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State v. Thomas, 138 Mo. 95;
State v. Burkhardt, 144 Mo. 83;

Add on page 46, at end of Point V.:

Barbier v. Connolly, *supra.*
Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 236.

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Endlich on Statutes, Sec. 533;
Cooley Const. Lim., p. 78;

State v. Pottman, 98 N. C. 660;
Bd. of Com. v. Coler, 96 Fed. 284;
Mo. Const., Art. IV, Secs. 1–53, Art. IX, Secs. 2–16–17–20–21–22–23.

(*b*) An affirmative enactment implies a negative of what is not included or different.

Sutherland on Stat. Const., Sec. 14;
Wells v. Supervisors, 102 U. S. 635;
Chandler v. Horn, 83 Ala. 390;
*Ex parte* v. Joffer, 46 Mo. App. 360;
Cooley Const. Lim., pp. 78–79;
Thomas v. Owens, 4 Md. 189;
Matter of Dorsey, 7 Port. 293;
Rison v. Farr, 24 Ark. 161;
People v. Raymond, 37 N. Y. 428;
People v. Sibertson, 55 N. Y. 50;
State v. Goldstocker, 40 Wis. 124;
People v. McKinney, 52 N. Y. 374.

(*c*) Directions given as to time or modes of proceeding must be followed.

Cooley Const. Lim., p. 94;
Varney v. Justice, 86 Ky. 506;
State v. Johnston, 26 Ark. 281;
Wolcott v. Wigton, 7 Ind. 44;
Conner v. Mathes, 8 Heisk. 504;
Life Assn. v. Board Ass'rs., 49 Mo. 512;
State v. Duncan, 28 Wis. 541;
Sutherland on Stat. Const., Sec. 66;
*Ibid*, Sec. 454 and notes;
Page v. Allen, 58 Pa. St. 238.

(*d*) General terms are limited by particular recitals.

Miller v. Wagonhausen, 18 Mo. App. 14;
Grumley v. Webb, 44 Mo. 444;
Dart v. Bagley, 110 Mo. 42;
Hall v. Schoenecke, 128 Mo. 661;
Roter v. Gabbert, 123 Mo. 21.

(*e*) Words of Constitutions should never be regarded as directory.

Varney v. Justice, 86 Ky. 596;
People v. Dettenthaler, 77 N.W. 450.

(*f*) Expression of one thing excludes others.

Page v. Allen, 58 Pa. St. 338;
Hall v. Schoenecke, 128 Mo. 661-8;
State *ex rel.* v. Foster, 119 Mo. 344;
Denman v. Broderick, 111 Cal. 46.

VII.

The classification by the State Court is unreasonable and arbitrary.

State v. Pond, 93 Mo. 606;
State v. Miller, 100 Mo. 439, 448.
Safe Dep. Co. v. Fricke, 152 Pa. St. 231;
Ayers App. 122 Pa. St. 281;
In Ruon St. 132 Pa. St. 273;
Commonwealth v. Patton, 85 Pa. St. 258;
Lloyd v. Smith, 176 Pa. St. 213;
Newman v. City of St. Louis, 123 Mo. 479;
St. Louis v. Dow, 145 Mo. 466, 475;
Mo. Const., Art. IX, Sec. 7;
*Ibid*, Art. IX, Secs. 20, 25;
Owen v. Baer; 55 S. W. Rep. 644.

VIII.

This arbitrary classification is contrary to the Fourteenth Amendment.

Gulf Co. v. Ellis, 165 U. S. 150;
State v. Loomis, 115 Mo. 307-14;
Atchison v. Mathews, 174 U. S. 96;
Maxwell v. Dow, 176 U. S. 581;
Johnson v. Goodyear Mfg. Co. 47 L.R.A. 338;
Wilkinson v. Lewis, 101 U. S. 22.

## ARGUMENT.

### I.

### A federal question is Raised in the Return, Motion for Rehearing and Assignment of Errors.

The Respondent below, Plaintiff in Error in this case, in his return to the alternative writ of mandamus, specifically pleads Section 1 of the Fourteenth Amendment to the Constitution of the United States, and that the act in question, approved June 19, 1899, and called herein the Nesbit law, violated and was in conflict, not only with the provisions of the State Constitution, specifically set out in said return, but was in conflict with the Fourteenth Amendment to the Constitution of the United States, in that it deprived citizens of the United States, residing in the City of St. Louis, of their right to the equal protection of the laws, and imposed upon citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office, and is null and void. The return also pleaded the Fifth Section of Article VIII. of the Constitution of Missouri; and that the General Assembly of the State, by virtue of the authority of said provisions of the Constitution, passed an act entitled "an act to create a Board of Election Commissioners in cities now having or which may hereafter have over 100,000 inhabitants; to provide for the appointment of the same; to define the duties of such Board; to provide for the registration of all voters in such cities; to govern elections therein; defining offenses and providing for punishment thereof; prescribing penalties for violating the provisions of this act, and abolishing the office of Recorder and Deputy Recorder of Voters;" that this act was approved by the governor May 31, 1895, and took effect and was of force August 25, 1895. (Session Acts of Missouri 1895, pp. 5 to 43 inclusive; also Rev. Stat. Mo. 1899, Vol. 2, pages 1443 *et seq.*): that under this law a

Board of Election Commissioners was duly appointed for the City of St. Louis, whose terms have not expired, nor have any successors been appointed or qualified for or to either of them, and that this law of May 31, 1895, "is the only law of this State providing for the registration of all voters in cities and counties of this State having a population of more than 100,000 inhabitants; and is now and since its taking effect has been in full force and effect, and applies to said City of St. Louis, etc., etc." (Trans., p. 32.): and further, that this law of May 31, 1895, and its amendments is the only law relating to and governing registration and elections in said City of St. Louis, and the City of St. Louis is and will be liable only for salaries and expenditures of commissioners who are appointed and have qualified thereunder. The return then refers to the repealing clause, Section 49 of the Nesbit act, which attempts to repeal the act of May 31, 1895, by name, and to the passage of the "Cardwell" amendment on the same day of the alleged passage of the Nesbit act, to-wit, June 19, 1899, and avers that the same are so inconsistent with each other that neither can take effect, and that the act of May 31, 1895, with its amendments, is the only law now in force and effect in this State relative to the appointment of election commissioners for cities of over 100,000 population, to which class of cities the City of St. Louis belongs. (Trans., p. 33.)

The Supreme Court of Missouri in its opinion denies this defense, quoting the constitutional qualifications for voters in Missouri and the election laws of other States and holding that it was entirely competent for the Legislature to regulate registration and the conduct of elections (Trans., pp. 160–1–2); and against the proposition that the law denied the equal protection of the law to voters in St. Louis cited the case of Missouri v. Lewis, 101 U. S. 22, to show that the State could adopt any system of judicature it sees fit for all or any part of its territory (Trans., p.

162). The State Supreme Court further, in the present case, held as follows: "Respondent further contends that inasmuch as the Nesbit law professedly repeals the act entitled 'An act to create a Board of Election Commissioners approved May 31, 1895,' and this act is approved June 19, 1899, and what is known as the Cardwell act, in relation to cities having over 100,000 inhabitants, which purports to amend said act of May, 1895, was approved also on June 19, 1899, that, therefore, the repeal of the act (of 1895) aforesaid was not accomplished. In reference to this it is enough to say that the Cardwell act is not before us for adjudication. That so far as concerns the Nesbit act it does repeal the act of 1895." Thus the State Supreme Court practically holds that the Nesbit act applies to cities having 300,000 inhabitants and over, and that the act of May 31, 1895, applies to cities having 100,000 inhabitants and over up to 300,000 inhabitants; and thereby the State Supreme Court, we here maintain, creates different laws for St. Louis from those applicable to Kansas City and St. Joseph (they being the only cities having over 100,000 inhabitants), in direct contravention of Article VIII., Section 5, of the Constitution of Missouri, which provides "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise." (Trans., p. 29.)

Respondent made this judicial construction of the Constitution and laws of Missouri (which is so clearly a violation of the Fourteenth Amendment to the Constitution of the United States) a ground of error in his motion for rehearing (Trans., p. 65) and specifically pointed out the differences between the Nesbit law and the law of May 31, 1895, which constitute violations of said Fourteenth Amendment to the Constitution of the United States

(Trans., pp. 169-170), and showed that the citizens of the only city of the State of Missouri having 300,000 or more inhabitants are, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States, and in violation of it, denied the equal protection of the laws provided for cities having 100,000 inhabitants and not exceeding 300,000, and that thereby their privileges and immunities as citizens of the United States are abridged, contrary to said Fourteenth Amendment, and notwithstanding the provisions of Section 5, Article VIII., of the Constitution of Missouri, and notwithstanding that Section 53 of Article IV. of the same Constitution provides that "In all other cases where a general law can be made applicable no local or special law shall be enacted, and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such, shall be judicially determined, without regard to any legislative assertion on that subject."

This motion for rehearing set forth in detail the provisions of the Constitution of the State of Missouri and of the United States, which respondent maintained the Supreme Court of Missouri violated in its decisions in this case (Trans., pp. 165 to 170). In the assignment of errors all of these objections were reasserted and preserved.

The Federal question is thus distinctly and legally raised in the present case, as appears from the following cases:

In the Kentucky Railroad Tax Cases, 115 U. S. 321, 336, the Court says: "The plaintiffs in error, however, did interpose a defence below, legitimate in itself, and arising under the Constitution of the United States, namely, that in the proceedings of the Board of Railroad Commissioners, resulting in the valuation and assessment, under the act of April 3, 1878, they were severally denied the equal protection of the laws, contrary to the Four-

teenth Amendment to the Constitution. As this defense was overruled by the Court of Appeals of Kentucky, another Federal question is presented which we are bound now to examine and decide."

In Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 232, 236, the Court says: "It cannot be denied that the plaintiff in error, in its appeal and specifications of objections to the tax, did raise a question under the Constitution of the United States. That question remained in the record as the foundation of the proceedings in the court, and, whether adverted to or not, was necessarily involved in the final decision of the case. We think it clear, therefore, that the writ of error cannot be dismissed."

In the case of Dewey v. Des Moines, 173 U. S. 193, it is said, page 199: "Although no particular form of words is necessary to be used in order that the Federal question may be said to be involved, within the meaning of the cases on this subject, there yet must be something in the case before the State Court which at least would call its attention to the Federal question as one that was relied on by the party, and then, if the decision of the Court while not noticing the question was such that the judgment was by its necessary effect a denial of the right claimed or referred to, it would be sufficient. It must appear from the record that the right set up or claimed was denied by the judgment or that such was its necessary effect in law. Roby v. Colehour, 146 U. S. 153; Chicago, etc., Railroad v. Chicago, 166 U. S. 226; Green, etc., Co. v. Patten Paper Company, 172 U. S. 58; Capital, etc., Bank v. First N. Bank, 172 U. S. 425."

It is further said in this same case: "Parties are not confined here to the same arguments which were advanced in the courts below on a Federal question there discussed. This Court must be able to see clearly, from the whole record, that a provision of the Constitution or act of Congress is relied upon by the party who brings

this writ of error, and that the right thus claimed by him was denied."

## II.

### A federal question arises on the decision of the State Supreme Court.

It will be seen from the above citations that the question of the violation of the Fourteenth Amendment to the Constitution of the United States by the denial of the equal protection of the laws has been in this record from the beginning. It arises not only from the enactment of the statute in controversy itself by the Legislature of Missouri, but this statute becomes more pronounced and clearly violative of the Constitution of the United States by the construction given by the Supreme Court of Missouri to the Constitution of that State in reference to this Nesbit law. The First Section of the Fourteenth Amendment to the Constitution of the United States reads as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

While the prohibition is against State action, it includes action by the executive, legislative or judicial officers of the State.

In the case of Virginia v. Rives, 100 U. S. 313, the Court says, page 318, commenting on this Fourteenth Amendment, "It is doubtless true that a State may act through different agencies,—either by its legislative, its executive, or its judicial authorities; and the prohibitions

of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another. Congress, by virtue of the Fifth Section of the Fourteenth Amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive, or the judicial department of the State. The mode of enforcement is left to its discretion. * * * But the violation of the constitutional provisions, when made by the judicial tribunals of a State, may be, and generally will be, after the trial has commenced. It is then, during or after the trial, that denials of a defendant's right by judicial tribunals occur. Not often until then. Nor can the defendant know until then that the equal protection of the laws will not be extended to him. Certainly until then he cannot affirm that it is denied, or that he cannot enforce it, in the judicial tribunals."

In *ex parte* Virginia, 100 U. S. 339, the Court says, on page 346: "We have said the prohibitions of the Fourteenth Amendment are addressed to the States. They are 'No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws.' They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the consti-

tutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or evade it."

It is against the action of the State toward persons within its jurisdiction that this prohibition is directed; it has no reference to equality of right as between citizens of different States, it does not mean that the same laws and rights must prevail throughout the Nation—equality of right under the constitution and laws of each State, as between the people of that State, is the end and aim of this amendment, which, after all, is practically the embodiment in the Constitution of the principle announced in the Declaration of Independence that "all men are created equal."

It is clear, then, that if the decision of the Supreme Court of the State of Missouri, declaring the Nesbit law to be the law for St. Louis, and the law of May 31, 1895, to be the law for Kansas City and for St. Joseph, thereby denied to the resident voters of St. Louis, both as citizens of the State and of the United States, the equal protection of the laws, then this Court is bound to reverse that judgment.

In the case of Fallbrook Irrigation District v. Bradley, 164 U. S. 112, the Court says, page 154, speaking of the jurisdiction of the United States Circuit Court: "In exercising that jurisdiction it was nevertheless the duty of the trial court to follow and be guided by the decisions of the highest State court upon the construction of the statute, and upon the question whether as construed the statute violated any provision of the State Constitution. The same duty rests upon this Court, and it has been so determined from the earliest period of its history. If the act of the State Legislature as construed by its highest court conflicts with the Federal Constitution or with any valid

25600



act of Congress, it is the duty of the Circuit Court and of this Court to so decide, and to thus enforce the provisions of the Federal Constitution. The following are some of the numerous cases in which this principle has been announced and carried into effect: Shelby v. Guy, 11 Wheat. 361; Nesmith v. Sheldon, 7 How. 812; Van Rensselaer v. Kearney, 11 How. 297; Webster v. Cooper, 14 How. 488; Leffingwell v. Warren, 2 Black 599; Hagar v. Reclamation District No. 108, 111 U. S. 701; Detroit v. Osborne, 135 U. S. 492."

We contend not only that the Nesbit law deprived the citizens of the United States residing in St. Louis of the equal protection of the laws, and that the construction given to that act by the Supreme Court of Missouri denied said citizens the equal protection of the law, but that the construction of the State Supreme Court of the provisions of the Constitution of the State of Missouri, and particularly of Article VIII., Section 5, herein above quoted, denied such citizens the equal protection of the laws.

It has frequently been held by this Court that the right to vote is not a right created or confirmed by the Constitution of the United States, but comes from the State. Nor is it a natural right. This right is conferred by the Constitution of Missouri in the most complete and absolute manner by Section 2 of Article VIII. "Every male citizen of the United States, and every male person of foreign birth, who may have declared his intention, * * * who is over the age of 21 years, possessing the following qualifications, shall be entitled to vote at all elections by the people:

"First. He shall have resided in the State one year," etc.

"Second. He shall have resided in the County, City, etc., at least sixty days," etc.

The right is only subject to the Fifth section of the same article authorizing the enactment of registration laws.

Thus conferred, it is entitled to protection as fully as a natural right or any right of property or person. The

right of every elector of Missouri to the benefit of this is therefor under the protection of this Court, by virtue of the Fourteenth Amendment.

It must be remembered also that, under the laws of Missouri, all electors residing in St. Louis to whom the State of Missouri has given the right of suffrage by the provisions of its Constitution and laws are electors not only for State officers, but for members of the National House of Representatives and for President and Vice-President of the Nation, and that while the State divides its territory into Congressional Districts, a vote for President and Vice-President of the United States, or rather for Presidential Electors, is on a general ticket throughout the State of Missouri. Citizens of the United States residing in St. Louis are therefore entitled to the protection not only of the registration and election laws but to the protection of the provisions of the Constitution of the State of Missouri equally with other citizens of said State; and if a construction of that Constitution by the Supreme Court of the State denies them the equal protection of that Constitution, it is an infringement of a right secured by the Fourteenth Amendment to the Constitution of the United States. Of course, ultimately the question of the unconstitutionality of the law arises on the law itself, but the law is so inseparably connected with the provisions of the Constitution of the State under which it was passed that the construction of the two together must cause a certain result, and if that result is a denial of the equal protection of the Constitution and laws of the State to any person or class of persons in the State or any part of it, the law violates the Constitution of the United States.

## III.

### On this question the United States Supreme Court is not bound by the State Court.

This question is one which this Court will decide for itself, and is not to be bound by the decision of the State

Court, for it involves the Federal question of whether the Constitution of the United States is violated.

In the case of Yick Wo v. Hopkins, 118 U. S. 356, the Court, through Mr. Justice Matthews, said, on page 365: "In the case of the petitioner, brought here by writ of error to the Supreme Court of California, our jurisdiction is limited to the question whether the plaintiff in error has been denied a right, in violation of the Constitution, laws, or treaties of the United States. The question whether his imprisonment is illegal, under the Constitution and laws of the State, is not open to us. And although that question might have been considered in the Circuit Court in the application made to it, and by this Court on appeal from its order, yet judicial propriety is best consulted by accepting the judgment of the State Court upon the points involved in that inquiry.

"That, however, does not preclude this Court from putting upon the ordinances of the supervisors of the County and City of San Francisco an independent construction; for the determination of the question whether the proceedings under these ordinances and in enforcement of them are in conflict with the Constitution and laws of the United States, necessarily involves the meaning of the ordinances, which, for that purpose, we are required to ascertain and adjudge.

"We are consequently constrained, at the outset, to differ from the Supreme Court of California upon the real meaning of the ordinances in question." The Court then takes up the ordinances, discusses them in detail, and holds that the discrimination against the petitioners was illegal, and that the public administration which enforced it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment to the Constitution. (Page 374.)

In the case of Atchison, etc., Co. v. Matthews, 174 U. S. 96, the Court, through Mr. Justice Brewer, referring to

the construction by the Texas Supreme Court of a law requiring railroads, in cases of damage by fire, to pay the plaintiff, if he recovers, a reasonable attorney's fee, says, page 100: "This Court is not concluded by the opinion of the Supreme Court of the State. Yick Wo v. Hopkins, 118 U. S. 356, 366. It forms its own independent judgment as to the scope and purpose of a statute, while, of course, leaning to any interpretation which has been placed upon it by the highest court of the State. We have referred to the interpretation placed upon the respective statutes of Texas and Kansas by their highest courts, not as conclusive, but as an interpretation toward which we ought to lean, and which, in fact, commends itself to our judgment."

In the case of Carter v. Texas, 177 U. S. 422, the Court, through Mr. Justice Gray, says, page 447: "But the question whether a right or privilege, claimed under the Constitution or laws of the United States, was distinctly and sufficiently pleaded and brought to the notice of a State court is itself a Federal question, in the decision of which this Court, on writ of error, is not concluded by the view taken by the highest court of the State. Neal v. Delaware, 103 U. S. 396; Mitchell v. Clark, 110 U. S. 633; Boyd v. Thayer, 143 U. S. 135."

In the case of Boyd v. Thayer, 143 U. S. 135, the Court, speaking through Mr. Chief Justice Fuller, in regard to the answer of the respondent, showing that his father had made a declaration of intention to become a citizen of the United States and that his father had, for 42 years, enjoyed all the rights, immunities and privileges, and discharged all the duties of a citizen of the United States, etc., and had completed his naturalization in strict accordance with the acts of Congress, etc., says, page 180: "As the allegation last quoted sets up a right and privilege claimed under the laws of the United States, this Court must determine for itself the question of the sufficiency

of this allegation, and is not concluded by the view taken of that question by the Supreme Court of Nebraska. In the words of Mr. Justice Miller, speaking for this Court: 'The question whether a plea sets up a sufficient defense, when the defense relied on arises under an act of Congress, does present, and that necessarily, a question of Federal law; for the question is and must be, does the plea state facts which under the act of Congress constitute a good defense?' "

The judgment of the Supreme Court of Nebraska in this case involving the right, as betwnen two persons, to the office of Governor of that State, was reversed.

In the recent case of Taylor *et al.* v. Beckham, Advance Sheets Opinions Supreme Court No. 16, p. 891, October Term, 1899, the Chief Justice delivering the opinion, this Court, while holding that where a case has been determined by the highest court of the State in accordance with the Constitution and laws of that State it will rarely interfere, yet, quoting from Boyd v. Thayer, *supra*, says: "Where the trial is in the courts, it is a 'case', and if a defense is interposed under the Constitution or laws of the United States, and is overruled, then, as in any other case decided by the highest court of the State, this Court has jurisdiction by writ of error." Quoting also from Wilson v. North Carolina, 169 U. S. 586, a case involving a right to a State office, the Court further says: "These rights are to be measured by the statute and by the Constitution of the State, **excepting in so far as they may be protected by any provision of the National Constitution.**" In the case at bar, the questions presented directly challenge the law of the State as violating the Federal Constitution, and challenge the decision itself as in contravention of that Constitution, and invoke that equal protection which, it is claimed, is within and is guaranteed by the National Constitution.

Assuming, then, that the record itself and the action of the Supreme Court of Missouri raise a Federal question and that the motion for rehearing preserves our exception to the action of the State Courts and that this Court is not bound by the decision of the Supreme Court of Missouri but can investigate the question itself, the way is clear to present the whole question to this Court.

The Fourteenth Amendment to the Constitution has been repeatedly construed by this Court and practically the decisions resolve themselves into this result, to-wit, that each case must stand on its own facts rather than be governed by specific general rules. As was said by this Court through Mr. Justice Bradley, in discussing the meaning and scope of the Fourteenth Amendment, in Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. at p. 237: "It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject that would include all cases."

## IV.

### The Fourteenth Amendment protects the right of suffrage and requires equal protection of the laws.

The case at bar involves one of the dearest rights of the American people—the right of suffrage.

In the case of Yick Wo v. Hopkins, 118 U. S. 356, this Court, through Mr. Justice Matthews, says, page 370: "But the fundamental rights to life, liberty and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the Commonwealth 'may be a government of laws and not of men.' For, the very idea that one man may be compelled to hold his life, or the means of living,

or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.

"There are many illustrations that might be given of this truth, which would make manifest that it was self-evident in the light of our system of jurisprudence. The case of the political franchise of voting is one. Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless, it is regarded as a fundamental political right, because preservative of all rights.

"In reference to that right, it was declared by the Supreme Judicial Court of Massachusetts, in Capen v. Foster, 12 Pick, 485, 489, in the words of Chief Justice Shaw, 'that in all cases where the constitution has conferred a political right or privilege, and where the constitution has not particularly designated the manner in which that right is to be exercised, it is clearly within the just and constitutional limits of the legislative power to adopt any reasonable and uniform regulations in regard to the time and mode of exercising that right which are designed to secure and facilitate the exercise of such right, in a prompt, orderly and convenient manner;' nevertheless, 'such a construction would afford no warrant for such an exercise of legislative power, as, under the pretense and color of regulating, should subvert or injuriously restrain the right itself.' It has accordingly been held generally in the States that whether the particular provision of an act of legislation, establishing means for ascertaining the qualifications of those entitled to vote, and making previous registration in lists of such a condition precedent to the exercise of the right, were or were not reasonable regulations, and accordingly valid or void, was always open to inquiry as a judicial question. See Daget v. Hudson, 1 Western Rep. 789, decided by the

Supreme Court of Ohio, where many of the cases are collected; Moore v. Collins, 17 Ohio St. 665."

On page 373 the same eminent Justice said: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned by this Court in Henderson v. Mayor, etc., 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275; *Ex parte* Virginia, 100 U. S. 339; Neal v. Delaware, 103 U. S. 370; and Soon v. Crowley, 113 U. S. 703."

All regulations of the elective franchise must be reasonable, uniform and impartial. They must not have for their purpose, directly or indirectly, a denial or abridgement of the constitutional right of citizens to vote, nor unnecessarily impede its exercise. If they do, they must be declared void. Cooley Const. Lim., Sec. 616.

State *ex rel.* v. Conner, 22 Neb. 265;
State *ex rel.* v. Tuttle, 53 Wis. 45;
Kineen v. Wells, 144 Mass. 497;
Monroe v. Collins, 17 Ohio St. 666;
State *ex rel.* v. Williams, 5 Wis. 308;
Page v. Allen, 58 Pa. St. 338;
Payne on Elections, Sec. 340.

If Congress, in its wisdom, has declined to pass laws regulating national elections, leaving those matters to the fairness and impartiality of the State authorities, it becomes all the more important that this Court should enforce all constitutional provisions for the protection of the rights of voters who are the electors at such elections, and see that no unfair nor unjust nor oppressive registration or election laws shall be enforced, and that they shall be reasonable, uniform and impartial.

In the case of U. S. v. Cruikshank *et al.*, 92 U. S. 542, this Court, through Mr. Chief Justice Waite, discussing the Fourteenth Amendment, says, page 554: "The Fourteenth Amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not, any more than the one which precedes it, and which we have just considered, add anything to the rights which one citizen has under the constitution against another. The equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the amendment guarantees, but no more. The power of the National Government is limited to the enforcement of this guaranty."

And, on page 555, the same learned Justice says: "In United States v. Reese *et al.*, *supra* (92 U. S.), p. 214, we held that the Fifteenth Amendment has invested the citizens of the United States with a new constitutional right, which is, exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship; but that exemption from discrimination in the exercise of that right on account of race, etc., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States; but the last has been."

In the case *ex parte* Yarbrough, 110 U. S. 651, this Court, through Mr. Justice Miller, said, page 665: "In the case of United States v. Reese, so much relied on by counsel,

this Court said in regard to the Fifteenth Amendment, that, 'it has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is an exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude.' This new constitutional right was mainly designed for citizens of African descent. The principle, however, that the protection of the exercise of this right is within the power of Congress is as necessary to the right of other citizens to vote as to the colored citizen, and to the right to vote in general as to the right to be protected against discrimination."

We have already called attention to the fact that the right to vote is a right secured by the Constitution of Missouri to its citizens.

In further discussing the powers of the Government of the United States, the learned Justice, referring to the temptation to control elections by violence and corruption as a constant source of danger, ends his opinion in these words: "If the Government of the United States has within its constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other."

In the case of Barbier v. Connolly, 113 U. S. 27, this Court, through Mr. Justice Field, said, page 31: "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws,' undoubtedly intended

not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses."

See also to the same effect as to the general purpose and scope of the Fourteenth Amendment the case of Bell's Gap Ry. Co. v. Pennsylvania, 134 U. S. 232, by Mr. Justice Bradley, at page 238.

In the case of Holden v. Hardy, 169 U. S. 366, this Court, through Mr. Justice Brown, discussing the relation of the States to the Government, says, page 389: "While the people of each State may doubtless adopt such systems of laws as best conform to their own traditions and customs, the people of the entire country have laid down in the Constitution of the United States certain fundamental principles to which each member of the Union is bound to accede as a condition of its admission as a State. Thus, the United States are bound to guarantee to each State a republican form of government, and the Tenth Section of the First Article contains certain other specified limitations upon the power of the several States, the object of which was to secure to Congress paramount authority with respect to matters of universal concern. In addition, the

Fourteenth Amendment contains a sweeping provision forbidding the States from abridging the privileges and immunities of citizens of the United States, and denying them the benefit of due process or equal protection of the laws."

In the case of Maxwell v. Dow, 176 U. S. 581, this Court, through Mr. Justice Peckham, discussing the Fourteenth Amendment, quotes with approval the language of the Chief Justice *In re* Kennler, 136 U. S. 436, 448, as follows, page 593: "The Fourteenth Amendment did not radically change the whole theory of the relations of the State and Federal Governments to each other, and of both governments to the people. The same person may be at the same time a citizen of the United States and a citizen of a State. Protection to life, liberty and property rests primarily with the States, and the amendment furnishes an additional guaranty against any encroachment by the States upon those fundamental rights which belong to citizenship, and which the State governments were created to secure. The privileges and immunities of citizens of the United States, as distinguished from the privileges and immunities of citizens of the States, are indeed protected by it; but those are privileges and immunities arising out of the nature and essential character of the National Government, and granted or secured by the Constitution of the United States. United States v. Cruikshank, 92 U. S. 542; Slaughter-house cases, 16 Wall. 36."

It is clear from these decisions of this Court that it will restrain State legislatures from passing or State courts from construing laws so as to deny equal protection to the citizens of the State, and will enforce State constitutional limitations on the subjects of legislative power and of registration and elections which were meant for the protection of all the citizens of the whole State, and the more when, from the absence of legislation by Congress, the

method of exercising the elective franchise of a citizen, as a citizen of the United States, is left to the control of the States.

V.

**The Nesbit law denies equal protection of the law as to Registration and Elections, in that it is unfair and partisan. It is Unequal as to Punishments.**

We have set out in our statement, at pages 20 to 39, such features of the law as we deem material. Tested by the cases cited, we maintain that this Nesbit law does deny to the citizens of St. Louis the equal protection of the laws in these respects:

(*a*) It denies them the right of appeal to any court from the action of the Precinct Boards of Registration and from the action of the Board of Election Commissioners, in striking their names from the registration lists, as qualified voters, while in cities of 100,000 inhabitants and up to 300,000 inhabitants, under the provisions of the law of 1895, this right is secured. It is secured so completely by the last named law that an appeal lies even to the highest court of the State.

(*b*) It denies them the right of appeal to any court or judicial tribunal from the action of the Precinct Boards of Registration or from the action of the Election Commissioners in admitting to registration or in refusing to strike from the registration lists of qualified voters persons who are not entitled to register or to vote—a right secured to all citizens by the law of 1895 in cities and counties of 100,000 and not exceeding 300,000 inhabitants.

(*c*) It allows a partisan board to add hundreds and even thousands of names to the registration lists, which names are unknown to the voters till the day of election and have been subjected to no canvass as to their right to remain on the lists as registered qualified voters. If a citizen of St. Louis registers in his own precinct, under the

Nesbit law, or names are placed on the registration lists in the precinct by the Precinct Boards of Registration during the three days allowed by the law for registration in the precinct, the Nesbit law requires, as does the law of 1895, that the clerks, representing parties of opposite politics, shall go together to each house or room from which the party registers, and ascertain, by personal inquiry, whether or no the party registered actually resides at that place.

But if the party has registered at the office of the Board of Election Commissioners, which he may do on all such days on which registration is not conducted in the precincts, which days of precinct registration are the Tuesday four weeks before the election, the Saturday following, and the third Tuesday before the election, and which he may do even on the Thursday, Friday and Saturday immediately preceding the election—there is no canvass or examination whatever provided by the Nesbit law of his right to do so; his name is placed on the registration and poll-books by the Commissioners, their deputy or clerks—all appointed by vote of a majority of the Board—and it appears on the day of election as the name of a qualified voter of the precinct. Thus a marked distinction is made by the Nesbit law between those who register or have their names placed on the registration lists at the office of the Election Commissioners and those who register in their own precinct. The latter are subjected to close and bi partisan scrutiny; the former go unchallenged and uncontested. Under the law of 1895 this cannot occur, for no registration under that law can be made in the office of the Board of Election Commissioners, but all must be made in the several precints, and all is subject to rigid bi-partisan scrutiny and canvass. This latter is the law in all cities of 100,000 and up to 300,000 inhabitants, and the former is the Nesbit law for all cities—meaning St. Louis alone—of over 300,000 inhabitants.

(*d*) Under the Nesbit law the Judges and Clerks of Election for each precinct, who are also the registration and canvassing officers for those precincts, are all appointed by vote of a majority of the Board of Election Commissioners—a majority necessarily partisan. This majority selects them arbitrarily—true, the law says they shall be of "opposite politics"—but whether of opposite politics or not, whether fit persons or not, whether intelligent or not, is left to the uncontrolled, arbitrary and exclusive determination of the majority of the Board. This in St. Louis alone. In all other cities of 100,000 and up to 300,000 inhabitants "the Commissioner or Commissioners shall select the judges and clerks to represent the party **to which said Commissioner or Commissioners belong**," and the person selected shall be intelligent, educated, etc., and "shall be recognized members of the party from which selected." The names of those selected shall be filed in the Circuit Court and published, and any elector may file objections to the persons so selected and have his objections heard and determined by the court. If sustained, new names are submitted by the Commissioners until fit persons are secured; and that being done, the appointments made by the Commissioners are confirmed by the court. The court names no one; it only hears and passes on names objected to, and then confirms the approved appointees of the Commissioners.

(*e*) The Nesbit law is so partisan as to deny to all citizens in St. Louis, not members of the political party to which the two majority members of the Board belong, the equal protection of the law. This is apparent on the face of the law. In this respect it is in strong contrast with the law of 1895. In our statement we have set forth the leading features of the two laws and we will not repeat them here but refer to that statement in support of this proposition. Where a State recognizes political parties by its laws as

does the State of Missouri by numerous provisions, then it must do so equally for all—it must grant to all its citizens equality of right and protection—and this it has not done in the enactment of this Nesbit law; and in that has violated the Fourteenth Amendment to the Constitution of the United States. It has done this, not only as between St. Louis and all other cities of over 100,000 inhabitants, but in St. Louis itself it has made such distinction between parties in that city as to deprive all citizens of that city who are not members of the political party to which the majority of the Board belongs of the equal protection of the law.

(*f*) The Nesbit law involves a denial of the equal protection of the laws, in that it provides penalties which are different in degree and character for offenses than are prescribed for the same offenses by the law of 1895 and by the General Statutes of the State; that is, the same offense committed in the City of St. Louis is punished one way under the Nesbit law; if committed in Kansas City or St. Joseph or in any other city of 100,000 and not having 300,000 inhabitants it is punished in another way under the law of 1895; and if committed in the State at large, it is punished in yet another way under the General Laws. Furthermore, certain acts are crimes if committed in one locality in the State, but not so when committed in another.

This is directly contrary to many decisions of the Supreme Court of the State of Missouri.

In State v. Walsh, 36 Mo. 400, at page 407, the Court says: "In a word, it is quite beyond the power of the legislature to enact even a general law for the punishment of a crime all over the State, and then make that same criminal act non-punishable if perpetrated in certain favored localities." See also State v. Thomas, 138 Mo. 95.

In State v. Burkhardt, 144 Mo. 83, at page 84, the Court says: "Under our Constitution it is not permissible to punish the same offense for violation of some public or

general law by one species of punishment in one locality, and by a different and more heavy punishment in another locality in this State. A law inflicting such different penalties for the perpetration of any given crime cannot bear the test of judicial examination."

See also *In re* Jilz, 3 Mo. App. 243, decided January 25, 1877, in which it is said on page 246: "A law which should prescribe death as the punishment of murder in one county, and imprisonment as the penalty for the same crime in other parts of the State, would be void, because not operating equally upon all inhabitants of the State. The general law applicable to the State prescribes, as the punishment for the offense of which the petitioner was convicted, imprisonment in the county jail not exceeding one year, or fine not exceeding $500, or both such fine and imprisonment. (Wag. Stat. 450, Sec. 34.)

"A law prescribing a different punishment from this in St. Louis County is clearly unconstitutional."

In the case of Owen v. Baer, 55 S. W. Rep., page 650, the Supreme Court of Missouri, through Marshall, J., in summarizing the decision, says: "That the Supreme Court has decided that 'legislation in regard to a class of persons is proper, but a natural class cannot be split in two, and different rules enacted in each class.'" Citing State v. Walsh, 136 Mo. 400; State v. Thomas, 125 Mo. 95.

In Pace v. Alabama, 106 U. S. 16, the question of different punishments for the same crime was condemned, and the Court, by Mr. Justice Field, said: "The counsel is undoubtedly correct in his view of the purpose of the clause of the amendment in question that it was to prevent hostile and discriminating State legislation against any person or class of persons. Equality of protection under the laws implies not only accessibility by each one, whatever his race, on the same terms with others, to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be sub-

**jected for the same offense to any greater or different punishment."** (Caldwell v. Texas, 137 U. S. 691.)

(*g*) The law also imposes unconstitutional requirements on the citizens of St. Louis as requisite to the right to vote in that it provides that a voter shall have resided in his election precinct at least 20 days prior to the election and is not "directly interested in any bet or wager depending upon the result of the election." No such requirements are in Article 8 of the State Constitution: to enforce them on the citizens of St. Louis is for the Legislature to attempt to add tests to them not authorized by the State Constitution and not applied to the other citizens of this State.

## VI.

**The Nesbit law unconstitutional because it contravenes the classification of Article VIII., Section 5, State Constitution.— Rules of Construction.**

The Plaintiff in Error contended before the Supreme Court of the State that the Nesbit law was unconstitutional because it expressly contravenes the classification of Article VIII., Section 5, of the Constitution of the State.

The first section of the Nesbit law is as follows: "Section 1. In all cities of this State now having, or which hereafter may have, 300,000 inhabitants, or more, there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith." (Trans., p. 40).

Article VIII., Section 5, of the Constitution of Missouri reads as follows: "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants, and may provide for such registration

in cities having a population exceeding twenty-five thousand and not exceeding

100,000 inhabitants and the power to pass such a law is not only directly conferred by Section 5, Article VIII., of the Constitution, but the General Assembly is expressly required and commanded to pass such a law."

In the case of Kansas City *ex rel.* v. Scarritt, 127 Mo. 642, the Court construing the words "and not otherwise" relating to the method of amending charters of cities organized under Section 16 of Article IX. of the Constitution, says, page 658: "We think the command in the organic law to the effect that the Charter of Kansas City shall be amended by the acts of her own people, **'and not otherwise,'** was written to be obeyed; and that it forbids the regulation and direction of purely municipal affairs in that city by act of the legislature. We believe that in authorizing Kansas City to frame a charter for its own government, the people of the State meant exactly what the Constitution says and nothing else. It is our duty to declare the meaning of the organic law in accordance with its intent as we understand it. We do not feel at liberty to strike the words 'and not otherwise' out of their place as a part of the city charter. In the connection in which these words appear (Article IX., Section 16) we consider them of mandatory force. We hold that they are binding upon all departments of the State government."

**jected for the same offense to any greater or different punishment."** (Caldwell v. Texas, 137 U. S. 691.)

Add after second line from top of page 74 this:

See also Bell's Gap R. R. Co. v. Pennsylvania, 134 U. S. 238, where Mr. Justice Bradley, quoting Mr. Justice Field in Barbier v. Connolly, 113 U. S. 31, as to the scope of the Fourteenth Amendment, says that one of the rights covered by it is **"that in the administration of criminal justice no different or higher punishment should be imposed on one than is prescribed to all for a like offense."**

this State.

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Article VIII., Section 5, of the Constitution of Missouri reads as follows: "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants, and may provide for such registration

in cities having a population exceeding twenty-five thousand and not exceeding one hundred thousand, but not otherwise."

In the case of Ewing v. Hobli zelle, 85 Mo. 64, the Court, speaking of this Article VIII., Section 5, says, page 72: "This Section of the Constitution in so far as it relates to cities containing more than 100,000 inhabitants is imperative and mandatory, and the legislature could not refuse to obey the mandate without disregarding a plain duty." On page 73, the Court says: "The act in question we have seen provides for the registration of voters in cities having more than 100,000 inhabitants and the power to pass such a law is not only directly conferred by Section 5, Article VIII., of the Constitution, but the General Assembly is expressly required and commanded to pass such a law."

In the case of Kansas City *ex rel.* v. Scarritt, 127 Mo. 642, the Court construing the words "and not otherwise" relating to the method of amending charters of cities organized under Section 16 of Article IX. of the Constitution, says, page 658: "We think the command in the organic law to the effect that the Charter of Kansas City shall be amended by the acts of her own people, **'and not otherwise,'** was written to be obeyed; and that it forbids the regulation and direction of purely municipal affairs in that city by act of the legislature. We believe that in authorizing Kansas City to frame a charter for its own government, the people of the State meant exactly what the Constitution says and nothing else. It is our duty to declare the meaning of the organic law in accordance with its intent as we understand it. We do not feel at liberty to strike the words 'and not otherwise' out of their place as a part of the city charter. In the connection in which these words appear (Article IX., Section 16) we consider them of mandatory force. We hold that they are binding upon all departments of the State government."

The Plaintiff in Error contended before the Supreme Court of Missouri that Article VIII., Section 5, of the Constitution *ex proprio vigore*, and by construction of the Supreme Court, created a **constitutional classification** of cities and counties for registration purposes, and that the Nesbit law directly contravenes this classification. If that section is mandatory and all of its words "were written to be obeyed" and "are binding on all departments of the State government," as has been often held as to constitutional provisions, then it is clear that the people of the State of Missouri limited the power of the legislature to pass any registration laws except as provided in this section and created a constitutional classification for registration purposes: (1) of cities and counties having a population of more than 100,000 inhabitants, for which it **commands** the legislature to provide registration laws; (2) cities (not counties) having a population exceeding 25,000 and not exceeding 100,000, for which it **permits** the legislature to provide registration laws, and (3) the rest of the State, for which the legislature was neither commanded nor permitted to provide registration laws; and by adding the words "and not otherwise" the Constitution practically said the State is classified for registration purposes into three classes: (1) cities and counties over a 100,000 population, without regard to maximum limit, in which there must be registration; (2) cities over 25,000 and under 100,000 population, in which there may be registration, and (3) in the rest of the State, where there shall be no registration.

*(a) The whole instrument is to be considered.*

It is a rule of construction that in construing a written constitution the whole of the instrument is to be considered in determining the intent of each part.

Wilcox v. People, 90 Ill. 186;
Manley v. State, 7 Md. 135;
Lastro v. State, 3 Texas App. 363.

See also

Rasmussen v. Baker, 50 Pa. 819;
Endlich on Statutes, Sec. 533;
Cooley's Const. Lim., p. 78;
State v. Patterson, 98 N. C. 660;
Board of Com. v. Coler, 96 Fed. 284.

Construing this provision of the Constitution of Missouri in connection with Section 1, Article IV., which reads: "The legislative power, **subject to the limitations herein contained**, shall be vested in a Senate and House of Representatives to be styled the General Assembly of the State of Missouri," and in connection with Section 53 of Article IV. thereof, which reads: "The General Assembly shall not pass any local or special law (enumerating in 32 clauses subjects on which special and local laws were prohibited), among others, "for the opening and conducting of elections, or fixing or changing the places of voting," the section ending with the words, "In all other cases where a **general law** can be made applicable, no local or special law shall be enacted, and whether a **general law** could have been made applicable in any case is hereby declared to be a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject;" and in connection with Section 2 of Article IX. of the Constitution, classifying cities and towns, and in connection with the special provisions in regard to adopting charters for large cities, Sections 16 and 17, Article IX. and Sections 20, 21, 22 and 23 of Article IX. it is perfectly evident that the people of the State of Missouri meant, in adopting that Constitution, that no special law could be passed for registration purposes for any particular city of the State; but that, on the contrary, general laws should be passed in reference to the respective classes mentioned in Article VIII. of Section 5. It was never intended that under the guise of a different classification as to population, laws might be passed for one city in the State by making

the number of inhabitants large enough to embrace only the City of St. Louis.

We are aware that the Supreme Court of Missouri has held that the Legislature might legislate on matters involving the relation of the City of St. Louis to the State, even directly by name, and that it had upheld classification in matters of general interest to the State on a basis of 200,000 or 300,000 population, by making the provision that all such laws should embrace all cities having, "**or which may hereafter have,**" the required population; but in those instances there was no specific constitutional classification—no limitation of power. The Legislature can exercise general powers except where the limitations of its powers are expressed or implied in the Constitution of the State or the United States, but when the limitation is expressed it must halt. Where the people fix the limits their servants must not transgress them. This is in accordance with the general principles of construction.

### (*b*) *An affirmative enactment implies a negative of what is not included or different.*

An affirmative enactment of a new rule implies a negative of whatever is not included or is different; and if, by the language used, a thing is limited to be done in a particular form or manner, it includes a negative that it shall not be done otherwise.

Sutherland on Stat. Const., Sec. 14;
Wells v. Supervisors, 102 U. S. 635;
Chandler v. Horn, 83 Ala. 390;
*Ex parte* Joffee, 46 Mo. App. 360.

Another rule of construction is, that when the Constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference to add to the condition or to extend the penalty to other cases.

Cooley Const. Lim., pp. 78-79;
Thomas v. Owens, 4 Md. 189;
Matter of Dorsey, 7 Port. 293;
Rison v. Farr, 24 Ark. 161;
People v. Ramond, 37 N. Y. 428;
People v. Sibertson, 55 N. Y. 50;
State v. Goldstocker, 40 Wis. 124;
People v. McKinney, 52 N. Y. 374.

(c) *Directions given as to time or mode of proceeding must be followed.*

If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument when we infer that such directions are given to any other end.

Cooley Const. Lim., p. 94;
Varney v. Justice, 86 Ky. 596;
State v. Johnston, 26 Ark. 281;
Wolcott v. Wigton, 7 Ind. 44;
Conner v. Mathes, 8 Heisk. 504;
Life Assn. v. Board Assessors, 49 Mo. 512;
State v. Duncan, 28 Wis. 541.

The modes prescribed for the exercise of the granted powers cannot be severed from the substantive things authorized to be done. The manner directed is the means —the appointed action—through which alone the power is effective for the substantive objects intended to be accomplished. The legislature must be constituted, sit at the time and place, and proceed in the methods directed by its creator; otherwise it is not clothed with, nor exercising, the sovereign, legislative power.

Sutherland on Stat. Const., Sec. 66;
Sutherland on Stat. Const., Sec. 454 and notes;
Page v. Allen, 58 Pa. St., 238.

(*d*) *General terms are limited by particular recitals.*

It has been held in Missouri that it is a general rule of construction applicable to all writings, constitutions, statutes, contracts, and charters, public or private, and even to ordinary conversations, that general and unlimited terms are restrained and limited by particular recitals, when used in connection with them.

Miller v. Wagenhauser, 18 Mo. App. 14;
Grumley v. Webb, 44 Mo. 444;
Dart v. Bagley, 110 Mo. 42;
Hall v. Schoenecke, 128 Mo. 661.

And further that "Effect should be given in construing statutes to provisions which are express, in preference to those which are general in their terms."

Roth v. Gabbert, 123 Mo. 21.

(*e*) *Words of constitutions should never be regarded as directory.*

The words of the Constitution are never to be regarded as directory merely. If directions are given as to the manner of exercising a power, it was intended that the power should be exercised in the manner directed, and in no other manner; no unessential matters were intended to be embraced in the Constitution.

Varney v. Justice, 86 Ky. 596;
People v. Dettenthaler, 77 N. W. Rep. 450.

(*f*) *Expression of one thing excludes others.*

The expression of one thing in the Constitution is necessarily the exclusion of things not expressed.

Page v. Allen, 58 Pa. St. 338;
Hall v. Shoenecke, 128 Mo. 661, 668;
State *ex rel.* v. Foster, 119 Mo. 344;
Denman v. Broderick, 111 Cal. 46.

25612



In this last named case, the Supreme Court of California, construing a registration law applicable only to certain cities, and under a Constitution much like ours, says: "The act is an improper attempt by the act itself to create a class of municipal corporations for a special purpose, without reference to the existing classifications by general law, and is local and special legislation, in conflict with the Constitution."

The action was by mandamus against the Auditor. It was claimed that the Auditor, as such, had no interest in the question which would enable him to raise the question as to the constitutionality of the act. The Court held that "the act under which petitioner claims being unconstitutional, there is no law authorizing the Auditor to draw the warrant, and to do the act demanded of him would be to violate his official duty and oath and subject himself to liabilities and penalties."

## VII.

**The Classification by State Court is unreasonable and arbitrary.**

If these principles of construction govern, on what theory can the legislature make a classification of 100,000 population in Kansas City and St. Joseph and 300,000 population in St. Louis for registration purposes? If it could decide on 300,000 it can on 150,000 or 500,000. If it could make one new class it could make twenty or one hundred classes, and by adding the magic words **"or which may hereafter have;"** it could have a different registration law for every city over 25,000 in this State and in every county and city over 100,000 by simply dividing on the population such cities and counties might respectively have. In other words, under the guise of general laws, one hundred or more special registration laws might exist and the idea of uniformity and general laws become obsolete.

Judge Sherwood, the learned Judge who wrote the opinion in the case at bar, in his dissenting opinion in

State *ex rel.* v. Pond, 93 Mo. 606, says on page 687: "As heretofore mentioned, our Constitution wisely provides for the enactment of general laws; commands that they be enacted wherever they can be made applicable; makes this a judicial question and refuses to trust it to the judgment of the legislature. Not satisfied with this, that instrument abounds with other similar restrictions forbidding all evasions of its stringent prohibitions; among others that of cutting down a general law by its partial repeal, and thus transforming it into a 'special local law.'"

In State *ex rel.* v. Miller, 100 Mo. 439, the Court has said: "Since there is a growing disposition to evade the prohibitions against special laws, we repeat that peculiarities and differences which will serve to distinguish persons or things as a class for many purposes **do not necessarily furnish any basis whatever for a legislative classification.** To justify such legislation the distinguishing features must be such as to call for and **demand a separate rule of statute law.**"

In the same case, the Court says, page 448: "To make such a law general there must be some distinguishing peculiarity which gives rise to a necessity for the law as to **the designated class.** A mere classification for the purpose of legislation without regard to such necessity is simply special legislation of the most pernicious character and is condemned by the Constitution. Mere differences which would serve for a basis of classification for some purposes amount to nothing in a classification for legislative purposes, unless such differences are of a character as, in **the nature of things,** to call for and demand separate laws and regulations." But in the case at bar this Court, while citing this very case of State v. Miller (which, by the way, is incorrectly designated at page 159 of Transcript as in 140 Mo. 439, instead of 100 Mo. 439) as authority, sustains the Nesbit law as a Constitutional enactment.

It would be difficult to give a reason why laws for cities and counties of over 100,000 inhabitants as to registration

25613



of voters should not be uniform and general as the Constitution requires.

Prior to 1883, the Charter of St. Louis, adopted by the people under the sanction of the Constitution, provided for registration.

In 1883 this was changed and a general registration act was passed by the General Assembly following the limitations of Article VIII., Section 5, of the Missouri Constitution and the classification was made on 100,000 inhabitants and over. St. Louis then had over 300,000 inhabitants. In 1895 another general registration act was passed, again classifying as required by said section of the Constitution on 100,000 inhabitants and over. St. Louis then had over 300,000 inhabitants. No reasonable ground for a different classification in 1899 exists—none can be given except the arbitrary will of a partisan legislature.

It has been further held that the classification of cities for purposes of legislation cannot be sustained unless the act relates to the exercise of a corporate power of such cities or to the number, character, powers and duties of a municipal officer thereof as to some subject under the control of the city government.

Safe Dep., etc., Co. v. Fricke, 152 Pa. St. 231;
Ayars App. 122 Pa. St. 281;
In Ruan St. 132 Pa. St. 273;
Commonwealth v. Patton, 85 Pa. St. 258;
Lloyd v. Smith, 176 Pa. St. 213.

This doctrine has been recognized by the Supreme Court of Missouri to the fullest extent—and new classifications are discountenanced when they are obviously intended to result in special legislation.

In the case of Murnane v. City of St. Louis, 123 Mo. 479, it was held that the formation of a new class of cities, within the first class, for strictly municipal objects, is in violation of that section of the Constitution which limits the number of such classes to four, and declares that "the

power of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions." Const., Art. IX. Sec. 7.

In the same case it was held that the language of the act, applying it to city charters then existing, was in conflict with the constitutional command against special legislation of that sort. See also State *ex rel.* v. Hermann, 75 Mo. 340; State *ex rel.* v. County Court, 89 Mo. 237, and other cases cited by the Court in the Murnane case on page 495, the Court saying: "We hence conclude that the act is special in its operation and effect. We think it was obviously so intended, and that the intent has not been sufficiently concealed to prevent its disclosure. That intent crops out in the part of the act already indicated; but, thus exhibited, the intent pervades the whole enactment; and stamps it as a fatal deviation from the fundamental law."

In the case of St. Louis v. Dorr, 145 Mo. 466, 475, the Supreme Court of Missouri says: "Conceding then (for argument) that the boulevard act before us is in form a general law (because it may apply to all cities that in future reach the prescribed size) it is yet unconstitutional because it would add another class to the four classes of legislative charters already existing and would confer on some cities of the first class (on reaching the population of 300,000) municipal powers not possessed by smaller cities of the same class. Worcester, etc., Bank v. Cheney, 94 Ill. 430; Denman v. Broderick, 111 Cal. 96; Bloss v. Lewis, 109 Cal. 493."

The learned Judge writing the opinion in the case at bar recognized that the Murnane case, 123 Mo. 479, was directly in conflict with his view, and said it was no longer authority. The majority of the court did not agree to this, three of the Justices only, Sherwood, Marshall and Burgess, concurred in this view, and three, Gantt, Brace and Valliant, concurred in all except the remarks as to the

scope of the Murnane case, and one, Robinson, not expressing any opinion in the case.

In the opinion of the Supreme Court of the State in this case (Trans., page 159) it is said that "respondent also asserts that House Bill No. 760 violates the following clauses of Section 53 of Article IV of the Constitution 'because it is a local or special law; (2) regulating the affairs of counties, cities, etc.; (11) for the opening and conducting of elections, or fixing or changing the places of voting; (14) creating offices and prescribing the powers and duties of officers in counties, cities, townships, election or school districts; (32) forbidding the passage of a local or special law when general laws can be made applicable, and making it a judicial question, etc. All of these objections are answered by the adjudications in Kansas City v. Stegmiller (151 Mo. 189) and State *ex rel.* Hawes v. Mason (153 Mo. 23) that St. Louis stands alone, and that a law designating that city by name would be valid and a general law."

We contend that in so deciding, and in placing this interpretation upon the Constitution of the State in this case, following the Stegmiller and the Hawes cases, the Supreme Court of the State has either misconstrued the Constitution of the State and deprived the citizens of St. Louis of the equal protection of that instrument, or that if the Constitution is susceptible of the interpretation so placed upon it by the Supreme Court, then we contend that that Constitution itself is in conflict with the first section of the Fourteenth Amendment to the Constitution of the United States, in that it denies to citizens of St. Louis the protection that it gives to citizens of all other parts of the State against special legislation. The first section of Article IV of the Constitution expressly provides, in vesting in the General Assembly of the State of Missouri the legislative power of the State, that such legislative power is "subject to the limitations herein contained." Section 53 of the same article in plain language,

admitting of no doubt as to its mandatory character, prohibits the General Assembly from passing any local or special law; (2) "regulating the affairs of counties, cities, townships or school districts; (12) for the opening and conducting of elections or fixing or changing the places of voting." And in the thirty-second subdivision of that section it is ordained that "in all other cases where a general law can be made applicable, no local or special law shall be enacted, and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject."

When we refer to Article IX of the same Constitution, we find that Section 7 directs the General Assembly to provide by *general* law for the organization and classification of cities and towns; that Section 16, which authorizes cities having a population of more than one hundred thousand inhabitants to frame a charter for its own government, ordains that said charter shall be consistent with and subject to the Constitution and laws of the State, and that said charter so adopted may be amended by a vote of three-fifths of the qualified voters of such city "voting at a general or special election, **and not otherwise;** but such charter shall always be in harmony with and subject to the Constitution and laws of the State."

When we examine Section 20 of the same Article, relating to the City of St. Louis and authorizing it to frame a charter for its government, it is provided that such charter shall be in harmony with and subject to the Constitution and laws of Missouri; that it may be amended at intervals of not less than two years on the vote of three-fifths of its qualified voters (Section 22), and that Section 23 ordains that such charter and amendments shall always be in harmony with and subject to the Constitution and the laws of Missouri; that the city as organized under it, shall perform all functions in relation to the State "in the

25615



same manner as if it were a county as in this Constitution defined," and Section 25 provides that "notwithstanding the provision of this Article, the General Assembly shall have the same power over the City and County of St. Louis that it has over other cities and counties of this State."

In depriving the City of St. Louis of the protection of these constitutional limitations on the power of the General Assembly, as the Supreme Court of the State has done in this case, we contend that the citizens of that city are deprived of the equal protection of the laws.

It is difficult to conceive or imagine or invent language that would more carefully provide and command that not only the City of St. Louis is not subject to special legislation, but it is explicitly and distinctly placed upon the same basis as all other cities and counties of the State, as to which there can be no question whatever that the Constitution plainly and emphatically provides and ordains that they must be governed by general laws applicable to all the cities and counties of the State. The only exception to this is contained in Section 7 of this Article IX, which authorizes a classification of the cities of the State, and requires the power of each class to be defined by general law, so that all municipal corporations of the same class shall possess the same privileges and be subject to the same restrictions. This section has been construed over and over again by the State Supreme Court as giving the General Assembly power to legislate for these cities by classes **for municipal purposes only.**

The most recent case in Missouri on this point is Owen v. Baer, not yet officially reported, but in 55 Southwest Reporter, 644. The opinion in this case was announced and filed February 29, 1900, after we had argued and submitted the case at bar, but before the decision in it had been announced. It is somewhat curious to note that while the present Constitution of Missouri has been in force for 25 years, the Supreme Court of the State has not yet

settled upon a construction of Article IX., Section 7, which has met with the support of the whole Court. In the dissenting opinion of Judge Marshall, in the Owen v. Baer case, he has, at page 656 of the Reporter, collated the decisions on this section into eleven (11) groups, of which he says that three of them, embracing some of the most important and recent of them, are no longer the law—while Gantt, Chief Justice, speaking apparently for a majority of the Court, refuses to accept Judge Marshall's construction or interpretation of the cases.

In the opinion of the Chief Justice, and which seems to be that of a majority of the Court, it is said (p. 645): "The purpose of classification would be nullified if the Legislature would take one city out of its class and indue it with powers not granted to all the others. The object to be attained by Section 7 of Article IX. of the Constitution was well understood when the people adopted that instrument as the organic law of the State. In a word it was to produce uniformity in the municipal charters of the State * * *."

Without the express provision of Section 7, Article IX., who can doubt that all courts would hold that the other provisions of the Constitution forbid legislation by classes even for cities? All cities would have to be legislated for and reached by a general law. When the Constitution provides that the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this State, as is done in Section 25 of this Article IX., it surely cannot mean that it shall have more power over that city than it has over any other city or county of the State. Yet this is the construction practically placed upon the Constitution by the Supreme Court of the State in the case at bar, and in so construing our State Constitution we urge and contend that that Court either violates the First Section of the Fourteenth Amendment to the Constitution of the United

25616



States and deprives the City of St. Louis of the equal protection guaranteed by that Constitution, or if the interpretation placed upon that Constitution by the State Supreme Court is correct, then the Constitution itself denies to the citizens of St. Louis that equal protection to which, under the Fourteenth Amendment of the Constitution of the United States, they are entitled.

## VIII.

### This arbitrary classification is contrary to the Fourteenth Amendment.

Not only did the Court, by its opinion in the case at bar, violate both the provisions of the Constitution of Missouri prohibiting the enactment of special laws and requiring the passage of general laws, and also Section 5 of Article VIII. of the Constitution, and in so doing take from the citizens of St. Louis the protection against special legislation which the Constitution of the State, if equal in its operations over all, gave them, but it also created, in order to protect the Nesbit law, a new, unnecessary, arbitrary and unreasonable classification as to registration, and in so doing deprived the citizens of the United States residing in St. Louis of their privileges and immunities, as we have heretofore shown, and particularly of the equal protection of those provisions of the Constitution of the State which, under the opinion of the Supreme Court in this case, are accorded to the citizens of the United States residing in the other cities of the State having over 100,000 inhabitants, to-wit, Kansas City and St. Joseph.

We contend that this is directly in the teeth of the Fourteenth Amendment to the Constitution of the United States, as construed by this Honorable Court.

In the case of Gulf, etc., Co. v. Ellis, 165 U. S. 150, this court construed an act of the Legislature of the State of

Texas providing for the payment of attorneys' fees in claims against railroads not exceeding $50 for stock killed, etc., if plaintiff should finally establish his claim. Plaintiff recovered damages for the killing of a colt and for the $10 attorney fee. The case was appealed through the District Court and Court of Civil Appeals to the Supreme Court of the State, which affirmed the judgment. A writ of error was sued out to reverse this judgment. In discussing the case, this Court, through Mr. Justice Brewer, on page 155, says: "But it is said that it is not within the scope of the Fourteenth Amendment to withhold from States the power of classification, and that if the law deals alike with all of a certain class it is not obnoxious to the charge of a denial of equal protection. While, as a general proposition, this is undeniably true (citing cases), yet it is equally true that such classification cannot be made arbitrarily. The State may not say that all white men shall be subjected to the payment of the attorney's fees of parties successfully suing them and all black men not. It may not say that all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

"As well said by Black, J., in State v. Loomis, 115 Mo. 307, 314, in which a statute making it a misdemeanor for any corporation engaged in manufacturing or mining to issue in payment of the wages of its employes any order, check, etc., payable otherwise than in lawful money of the United States, unless negotiable and redeemable at its face value in cash or in goods and supplies at the option of the holder at the store or other place of business of the corporation, was held class legislation and void: 'Classifi-

25617



cation for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes, furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations. Thus the legislature may fix the age at which persons shall be deemed competent to contract for themselves, but no one will claim that competency to contract can be made to depend upon stature or color of the hair. Such a classification for such a purpose would be arbitrary and a piece of legislative despotism, and therefore not the law of the land."

After citing with approval Vanzant v. Waddel, 2 Yerger 260; Dibrell v. Morris' Heirs, 15 S. W. Rep. 87; and Bell's Gap, etc., Co. v. Pennsylvania, 134 U. S. 232, and discussing the same, the learned Justice further says, page 159: "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this Court, in Yick Wo v. Hopkins, 118 U. S. 356: 'When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.' The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.' While such declaration of principles may not have the force of organic law,

or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government.'"

Again, after discussing numerous decisions involving the question of classification, the Court says, page 165: "It is apparent that the mere classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, **and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.** Tested by these principles the statute in controversy cannot be sustained. The judgment of the Supreme Court of Texas is, therefore, reversed, and the case is remanded for further proceedings not inconsistent with this opinion."

In the case of Atchison, etc., Co. v. Matthews, 174 U. S. 96, this Court, discussing a statute of Kansas providing for an attorney's fee to become a part of the judgment where a party recovers against a railroad for damages by fire, through Mr. Justice Brewer, distinguished the Ellis case and held the statute constitutional, saying, page 104: "It is also a maxim of constitutional law that a legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people as a whole, and courts will not lightly hold that an act duly passed by the legislature was one in the enactment of which it has transcended its power. On the other hand, it is also true that

25618



the equal protection guaranteed by the Constitution forbids the legislature to select a person, natural or artificial, and impose upon him or it burdens and liabilities which are not cast upon others similarly situated. It cannot pick out one individual, or one corporation, and enact that whenever he or it is sued the judgment shall be for double damages, or subject to an attorney fee in favor of the plaintiff, when no other individual or corporation is subjected to the same rule. **Neither can it make a classification of individuals or corporations which is purely arbitrary, and impose upon such class special burdens and liabilities. Even where the selection is not obviously unreasonable and arbitrary, if the discrimination is based upon matters which have no relation to the object sought to be accomplished, the same conclusion of unconstitutionality is affirmed."**

Mr. Justice Harlan, Mr. Justice Brown, Mr. Justice Peckham and Mr. Justice McKenna, dissented from this opinion, in which dissent occurs this language, page 123: "Undoubtedly, the State may prescribe new duties for a railroad corporation and impose penalties for their non-performance. But, under the guise of exerting its police powers, the State may not prevent access to the courts by all litigants upon equal terms. It may not, to repeat the language of the Court in the Ellis case, 'arbitrarily select one corporation or one class of corporations, one individual or one class of individuals, and visit a penalty upon them which is not imposed upon others guilty of like delinquency.' Arbitrary selection cannot, we said in the same case, 'be justified by calling it classification.' **There is no classification here except one that denies the equal protection of the laws.** It would seem that what was said in the Ellis case was exactly in point, namely, 'as no duty is imposed, there can be no penalty for non-performance.' Instead of prescribing some penalty for the neglect by the railroad company of duties specifically enjoined upon it, the State attempts, and by the decision just rendered, is enabled—

to take from the company the right which we declared in the Ellis case was secured by the Constitution, namely, the right to 'appeal to the courts as other litigants, under like conditions, and with like protection.' * * * If there is one place under our system of government where all should be in a position to have equal and exact justice done to them, it is a court of justice—a principle which I had supposed was as old as Magna Charta." So, that on the point here urged, all the menbers of the Court were agreed.

In the case of Maxwell v. Dow, 176 U. S. 581, this Court, through Mr. Justice Peckham, cites with approval Caldwell v. Texas, 137 U. S. 692, which held that no State can deprive particular persons or classes of persons of equal and impartial justice under the law without violating the Fourteenth Amendment to the Constitution and the due process of law within the meaning of the Constitution is secured when the laws operate on all alike and no one is subjected to partial or arbitrary exercise of the powers of the government. He also cites with approval, Leeper v. Texas, 139 U. S. 462, 467, which said, "that by the Fourteenth Amendment the powers of States in dealing with crime within their borders are not limited, except that no State can deprive particular persons, or class of persons, of equal and impartial justice under the law; that law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied; and that due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice." See also McGowan v. Illinois Trust, etc., Co. 170 U. S. 283, 294.

In the case of Johnson v. Goodyear Mining Co., 47 L. R. A. 338, the Supreme Court of California discusses this question of classification at length, stating on page 343: "It

is claimed that corporations are a class, and that classifications can be made, and that a law is not unconstitutional if it affects all of a class. **While this is true, yet the classification must be founded upon differences either defined by the Constitution or natural, or which will suggest a reason which might naturally be held to justify the diversity of legislation.** Darcy v. San Jose, 104 Cal. 645; State *ex rel.* v. Hammer, 42 N. J. L. 439; Cooley Const. Lim., 6th Ed., page 484. Arbitrary selection can never be justified by calling it classification. Gulf, etc., Co. v. Ellis, 165 U. S. 159."

This case, page 345, quotes with approval the opinion in Louisville, etc., Co. v. Railroad Commission, 19 Fed. Rep. 679, in which the Circuit Court of the United States held unconstitutional an act of the legislature of the State of Tennessee creating a railroad commission, and making certain discriminations against railroads. In the opinion it is said: "Their general object (referring to the provisions of the Fourteenth Amendment) is to secure to all citizens in like circumstances an equality of legal rights, and to protect minorities and other interests not strong enough to protect themselves against the aggressions of the majority, to restrain all injurious legislative discrimination against persons and property; to compel an equal distribution of the burdens of government upon every citizen, natural or corporate, coming fairly within the purview of the law; and to give to every one an equal right to invoke the remedies prescribed by law for redress of wrongs done either to his person, reputation, or property."

The case of Missouri v. Lewis, 101 U. S. 22, which is relied on by the Supreme Court of the State, and cited against us, is not, as we understand it, in conflict with these views. In it, this Court, through Mr. Justice Bradley, discussed the general objects and purposes of the Fourteenth Amendment, saying, on page 30: "These are to extend United States citizenship to all natives and naturalized persons, and to prohibit the States from

abridging their privileges or immunities, and from depriving any person of life, liberty, or property without due process of law, and from denying to any persons within their jurisdiction the equal protection of the laws. It contemplates persons and classes of persons. It has not respect to local and municipal regulations that do not injuriously affect or discriminate between persons or classes of persons within the places or municipalities for which such regulations are made. The amendment could never have been intended to prevent the State from arranging and parceling out the jurisdiction of its several courts at its discretion. No such restriction as this could have been in view or could have been included in the prohibition that 'no State shall deny to any person within its jurisdiction the equal protection of the laws.' It is the right of every State to establish such courts as it sees fit, and to prescribe their several jurisdictions as to territorial extent, subject matter, and amount and the finality and effect of their decisions, provided it does not encroach upon the proper jurisdiction of the United States **and does not abridge the privileges and immunities of citizens of the United States and does not deprive any person of his rights without due process of law, nor deny to any person the equal protection of the laws, including the equal right to resort to the appropriate court for relief.**"

We respectfully submit that there are general expressions in the opinion as to the power of the State to legislate for different parts of the Commonwealth, that were scarcely necessary to the decision of that case, and that have been modified by subsequent cases hereinbefore cited, particularly those wherein this Court denounces artificial and unreasonable classification. But it will be observed that one of the restrictions specially mentioned by Mr. Justice Bradley, as coming within the prohibition of the Fourteenth Amendment is, **'including the equal right to resort to the appropriate court for redress.'** We maintain that

this equal right, along with others herein pointed out, is positively and unequivocally denied to the citizens of St. Louis, while it is granted to the citizens of Kansas City and St. Joseph, although all three of said cities come within the same constitutional class, that is, have over 100,000 inhabitants.

In view of this long array of authorities, we confidently insist that the Nesbit law and the opinion of the Supreme Court of the State in this case sustaining it, amounts to a denial of the equal protection of the laws of the State to the people of the City of St. Louis and that it should be reversed.

BEN. SCHNURMACHER,
City Counselor.

JOHN W. NOBLE,
GEO. H. SHIELDS,
GEO. D. REYNOLDS.
Of Counsel, for Plaintiff in Error.

25622

No. 258.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1900.

IN TERM TIME.

ISAAC M. MASON, Auditor of the City of St. Louis, Missouri, Plaintiff in Error,

vs.

THE STATE OF MISSOURI, EX REL. JAMES McCAFFERY, LAWRENCE D. KINGSLAND AND GEORGE KOBUSH, Defendants in Error.

## STATEMENT, BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

## STATEMENT.

Section 5 of article VIII of the Constitution of Missouri requires the legislative department to provide registration laws for all cities and counties having a population of more

than 100,000 inhabitants, and authority is given to provide for such registration in cities having a population of 25,000 inhabitants and not exceeding one hundred thousand.

Obedient to the foregoing mandate of the Constitution, the General Assembly of Missouri, at its session in 1899, passed an act to provide for the registration of voters in cities now having, or which may hereafter have, 300,000 inhabitants or more; providing for the creation of a board of election commissioners and their appointment, as well as defining the duties thereof; to govern elections in such cities, defining offenses, providing penalties and prescribing rules and regulations governing registration of voters and elections therein.

The provisions of the act above referred to creates a board of election commissioners in all cities in the State containing, or which may afterwards contain, 300,000 inhabitants or more; it shall consist of three members, whose term of office is four years, and until their successors are commissioned and qualified. They are appointed by the Governor with the advice and consent of the Senate. In making the appointment the Governor designates the commissioner who shall be chairman of the board of the respective cities. In case of vacancy for any cause, it is filled by an appointment by the Governor for the unexpired term until the assembling of the next Legislature, when the appointee's name shall be submitted to the Senate for confirmation. The commissioners so appointed are required to be legal voters, residents of the State for at least five years, and of the city for a like term, and shall be of approved integrity and capacity. No other office shall be held by them, they being ineligible to any elective or appointive office during their term. Before entering upon the duties devolving upon them, they are required to take and subscribe an oath to support the Constitution of the United

States and of the State of Missouri, and to demean themselves faithfully in office. In addition to the subscribing of the oath, they are required to execute a bond to the State in the sum of $10,000, with such security as may be approved by the Governor, conditioned for the faithful and honest performance of their duties. The foregoing requirements are provided for by sections 1 and 2 of said act.

By section 3 the commissioners are required to appoint one deputy election commissioner, who holds his office during the pleasure of the commissioners, and is vested with all the powers and duties of the commissioners during their absence, sickness or inability. The deputy is made the secretary of the board, and is given the right to employ such additional clerical and other assistants from time to time as may be necessary to promptly and correctly transact the business of the department. The deputy and his employes are subjected to the same restrictions and required to take and subscribe a like oath as the commissioners. The election commissioners, the deputy election commissioner and the judges of the election and registration are authorized to administer such oaths or affirmations as may be required in the administration of the duties of their several offices. The commissioners appointed under the provisions of the act are required to perform all the duties and take the places of the Board of Election Commissioners existing in said cities at the time the act becomes a law, and all offices and boards of election commissioners constituted at the time of the taking effect of the act, and which are applicable to cities containing 300,000 inhabitants or more, are dissolved, and all acts inconsistent with the act of 1899 aforesaid are repealed.

Section 4 of said act designates the city hall of the respective cities, subject to the application thereof, as the place where shall be kept the office of the board, which shall

remain open for the transaction of the business thereof during business hours. Immediately after the appointment of the commissioners and upon the opening of the office, the officers or custodians of the property of the expiring board shall, upon demand of the new commissioners, turn over to them all books of registration, poll books, tally sheets, ballot boxes, forms, blanks, stationery and property of every description in their hands in any way relating to registration or elections. The commissioners are authorized to purchase all necessary ballot boxes, books of registration, pool books, tally sheets, ballots, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of elections, as well as for all incidental purposes connected therewith. They are required to appoint the places of registraion and also the polling place in each precinct, in the city, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof.

Section 5 authorizes and empowers the commissioners or deputy commissioner to register any person or persons in their office, or re-register or transfer any person or persons who may have changed their residence from one ward to another or from one precinct to another in any ward at any time except on such day or days on which the precinct registration may be held in said city, and except such days as intervene between the completion of the registration and the next following election. A change of residence from one place in the precinct to another shall not necessitate a registration transfer or deprive the registered voter of his right to vote in said precinct. The registration of voters shall be done in the same form and manner and in the same book as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration.

The provisions of section 6 make it the duty of the board to divide the city into election precincts, regarding ward lines, composed of compact and contiguous territory, and limited as nearly as practicable to four hundred actual voters. The division shall be made within six months after the taking effect of the act, and at least six months before each subsequent presidential election. The election commissioners may revise and re-arrange the precincts, and increase or decrease their number on the basis of the votes cast at the previous presidential election for president, making such precincts contain, as near as practicable, four hundred voters, measured by the votes of such election, and the precincts and the wards shall be numbered consecutively.

Section 7 requires the commissioners to prepare for a new and general registration of voters for the next city or State election, as the case may be, after their appointment and qualification, and the registration thereby made shall be continued and revised as provided.

According to section 8, the commissioners are required, at sixty days prior to the first city or State election after the act becomes a law, to select or choose four electors as judges of election for each precinct in the city, who must be citizens of the United States and entitled to vote in such precinct at the next election; and such judges of election must be men of good repute and character, as well as of good understanding and capability, and must reside in the ward in which the precinct for which they are selected is situated, and shall not hold any office or employment under the United States or the State of Missouri, or the city in which the election is held, and shall not be candidates for any office at the next ensuing election. Two clerks of election for each precinct shall also be selected within the same time by the commissioners, and shall possess the same qualifications as the judges. Before entering upon a discharge of duty the judges and clerks are required to take and sub-

scribe a like oath as that subscribed by the commissioners. They shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and, during their term, shall serve as judges and clerks at all special, local or municipal elections. In the event of a vacancy in the office of judge or clerk, the commissioners fill the same by an appointment. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerk.

Section 9 makes it the duty of the board of registration and election clerks to first meet in the precinct on Tuesday, four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day shall be Tuesday, three weeks before said election.

A new general registration must be made in every year thereafter in which a presidential election occurs. The first day of registration in such case shall be Tuesday, four weeks before the election; the second day of registration shall be the Saturday following, and the third day shall be Tuesday, three weeks before the election. Two registry books shall be furnished to each board of registration by the commissioners. The headings of the books shall be so prepared that the registry shall be made alphabetically, according to the surnames of the persons applying for registration, and it shall be so arranged that the residence of such person shall appear in the first column. The registry shall be ruled and one name written on each line, while no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue or other location of dwelling, if there be a definite number; but if there shall not be a number, such clear and definite description of the place shall be given as will enable it to be readily

ascertained. In case there shall be more than one house at the number given by the applicant as his place of residence, a statement shall be made showing in which house he resides; and if there shall be more than one family residing in the house, the floor on which he resides and the number and locaton of the room or rooms occupied by him, whether front or rear, must be designated. Every floor below the level of the street or ground shall be designated as the basement and the first floor above such level shall be designated as the first floor, and each floor above that as the second, or such other floor as it may be.

Under the column "name" the name of the applicant, with the surname first, with the Christian name afterwards, shall be written in full. Under the column "nativity" the State, county, kingdom, empire or dominion, as the fact shall be, must be stated. Under the column "color" the word "white" or "colored" shall be stated, according to the fact. Under the subdivision of general column "term of residence," the period, by its months, or years, in the precinct, city or State, as given by the applicant, shall be set out. Under the column headed "native" the word "Yes" or "No," according to the fact, as stated by the applicant. If the applicant be of foreign birth, but having made a declaration of intention to become a citizen, but not yet naturalized, then the word "Yes" shall be written under the column headed "declaration of intention." Under the column marked "qualified voter" the word "Yes" or "No," as the fact shall appear or be determined by the board of registration shall be written, it being, however, required of the board to designate as a qualified voter any male person, who, if otherwise qualified, shall not be of age at the time of making application, provided such person shall be of the age of twenty-one not later than the day of election immediately following the time of the application for registration. Under the column "date of application," the month, day and year of

the presentation of the applicant for registration shall be written. The applicant is required to write his name in one of the registers under the column headed "signatures," and if he be unable to write his name, he shall make his mark after his name is written for him. This section requires a complete description of the facts, showing the eligibility of the voter, and is necessary in order to guarantee the purpose of the registration law, and enable the proper officers of the State, as well as the individual voters thereof, to have full opportunity to protect the public against corrupt and illegal votes.

Section 10 provides that the judges of election shall constitute a board of registration in the precinct for which they may be appointed. They are required to open the registration office at eight o'clock, a. m., and continue in session until nine o'clock, p. m., on each registration day. One of the judges shall administer to all persons who shall personally apply for registration an oath in form as follows: "You do solemnly swear (or affirm) that you will fully and truly answer all such questions that shall be put to you touching your place of residence, name and place of birth, your qualifications as an elector and your right as such to register and vote under the laws of this State;" each of the clerks and one of the judges shall be in charge of the registry book and make the entries therein required while one of the judges shall ask the questions as to the qualifications, and after he is through any of the judges may ask questions. One of the judges may relieve the clerks from time to time, as necessity may seem to demand, in making entries in the book. The name of every applicant shall be entered in the registry books, and all the facts shall be therein stated whether the applicant be entitled to vote or not. If it be determined by the board that the applicant is not qualified to vote in such precinct, then such entry shall be made in the proper column. Unless a majority of the

judges shall determine that the applicant is qualified, he shall be entered as not qualified, subject to the applicants right of appeal, as provided. When such male persons of the age of twenty-one years residing in the precinct, as apply personally for registration shall be entered in the register, and every applicant who may be twenty-one years of age on the day of the next election, or of foreign birth, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered therein as a qualified voter. Every applicant who has commenced to reside in the precinct at least twenty days before the election shall be entered in the registry and marked "qualified" or "disqualified," as the case may be, and unless he shall have resided in the precinct twenty full days, he cannot vote therein, although otherwise qualified. At the end of the day's registration, the judges shall sign their names at the end of the list on each page of the registration book. In case of vacancy upon the board on any day of registration by reason of absence, disqualification or refusal to act or otherwise, of either judge or clerk, the same shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judge or clerk, as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

Section 11 prescribes the qualifications of voters and contains only such provisions as are designated in and authorized by the Constitution.

Section 12 makes provision for verification lists, and provides that if during the day of registration a registered voter of the ward shall go before the board of registration and make oath that he believes any particular person already registered is not qualified, such fact shall be noted, and after the completion of the verification lists the board shall make

a cross or checked mark in ink opposite such name on each of said verification lists. If the judges shall know that any person complained of is a qualified voter and believe that such complaint is made only to vex and harass the voter, then the cross or checked mark shall not be put upon the list. Before eight o'clock on the following day the board of registration shall return the verification lists to the office of the election commissioner.

Section 13 makes the clerks of election the canvassers of the precinct for which they are appointed and upon Wednesday and Thursday following the third day of registration they each having one of the verification lists, are required to go together and canvass the precinct, calling at each dwelling place or house where any one may reside and is designated upon the verification lists, and if they find that any person upon their list does not reside at the place designated, they shall make a check mark opposite such name. If, in making any such canvass, any person shall refuse to answer questions or give required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor and liable to a penalty not exceeding $50.

By section 14 it is provided that immediatedly upon the completion of the canvass, the canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and the verification lists to all persons named therein against whose name they have check marks indicating that they do not resides at such places as before stated and also to the address of all persons against whose name the board or judge of election has placed a check mark, which notice shall require such person to appear before the board of registration upon the Saturday following and show cause why his name should not be erased from the registry. Blanks and postage shall be furnished by the commissioners for the purposes of the

canvassers. A similar notice shall also be served by one of the canvassers, either at the time said canvass is being made or before the Saturday following, by leaving the same with the party, if found, and if he should not be found at the place designated in the registry and in the verification lists.

By section 15 it is provided that on Saturday following the Tuesday, three weeks preceding the election, the Board of Registration shall meet at the place designated and shall remain in session from ten o'clock a. m., until ten o'clock p. m., for the sole purpose of revising their registry. The canvassers shall make out a list of the names of parties checked, to whom such notice has been sent, given or left with the address. If any person to whom a notice has been sent shall appear before the Board of Registration during that session he shall be sworn, and the canvassers shall hear him upon the question affecting his eligibility as a qualified voter in the precinct, and if they so find that such person is not a qualified voter, they shall draw a line in ink under his name, which shall indicate that his name has been erased from the registry and he is not entitled to vote, unless restored, as afterwards provided. During the last hour of the session, if any person so notified to appear, shall not appear and show cause why his name should not be erased, it is the duty of the Board to erase the same. The verification lists, after final revision, shall be at once returned to the office of the Election Commissioners.

By section 16 any voter or voters in the ward containing such precinct may make application in writing before the Board of Registration, at the proper session to have any name upon the registration books of any precinct erased, and which applicant making the same shall give the person whose name he seeks to erase due notice in writing or otherwise at least one day before the session. If, upon hearing the application, the Board concludes to erase the

name, they shall so note it on the registry. Such person may appear before the Board of Election Commissioners for the purpose of reinstating his name upon the registry of voters, presenting from the Board of Registration his certificate of rejection.

Section 17—At the end of the last session of the Board of Registration, the Board and clerks shall compare and correct the registers and make them correspond and agree. Judges shall then immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall then return the two registers to the Election Commissioners, who shall thereupon cause copies to be made of all the names upon the register with the address, arranged according to streets, avenues or alleys, commencing with the lowest number. It shall be printed in sufficient number to meet all demands and upon application a copy shall be given to any person in the precinct. The registers in the office of the Election Commissioners shall be public records and open to public inspection.

Section 18 provides that every general registration shall be made in the same manner and in conformity with the directions in said act contained. At every general registration every person desiring to register shall appear in person and make application under oath, as in case of the first registration. The same forms, blanks and method of proceedings shall be had before and by the Board of Registration and by the canvassers and by the judges of election and election clerks, and by the Election Commissioners in every subsequent registration as is directed for the first registration.

Section 19—At every election held in such cities between general registrations, the last general registration shall be used, and for that purpose the Board of Registration shall meet on Tuesday, three weeks preceding such

election, and on the Saturday following, and shall hold a session from eight o'clock a. m., until ten o'clock p. m., and on each day names may be added to the registry in the same way upon application as in the case of a general registration, and all forms and requirements are to be observed as provided for in case of a general registration.

Section 20—By this section it is provided that any voter of the precinct shall be permitted to be present at the place of registration of such precinct and shall have the right to challenge any applicant who applies to be registered, but if the Board be satisfied that such person is a qualified voter he shall be so registered, and if denied the right to be registered as a qualified voter, he may make and sign an application in writing and file the same with the Election Commissioners, to be heard and considered by the Board of Appeals as in other cases provided.

According to section 21, the Election Commissioners are required on Thursday, Friday and Saturday of the week prior to the week in which an election is to be held, to sit as a Board of Appeals for the purpose of hearing such applications and appeals as shall be made by persons who applied for registration and were refused by the Board of Registration or who had their names stricken from the registry afterwards. The Board of Appeals is also empowered to register as qualified voters such persons as may make application therefor and who failed to appear before the Board of Registration at the proper time, because of sickness, forgetfulness, absence from the city or other reasonable excuse.

Section 22 makes it the duty of the Election Commissioners to give ten days' notice in two daily newspapers of the city of opposite politics, stating the time and place of registration of each precinct in the city. On the day preceding any election they shall deliver the two registers of the precinct, the poll-books, ballot boxes, verification

lists, the necessary blanks and stationery, packages of ballots and the key to the box to one of said judges of election at his residence in the precinct.

Section 23 requires the polls to be opened at six o'clock in the morning and continue open until seven o'clock in the afternoon of the same day. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted and returns made thereof. If any judge or clerks shall not be present after the expiration of fifteen minutes from the time of the opening of the polls, or be disqualified or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk by selecting a person of the same politics as the judge or clerk who is absent.

Section 24 requires that before the voting begins the ballot-box shall be empty and shall be opened and shown to those present to be empty and shall not be removed from public view from the time it is shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until after the close of the polls. The judges of election shall each be held guilty of a misdemeanor if the ballot-box shall not be kept constantly in the public view during the progress of the election.

Section 25 requires each of the clerks of election to keep a poll-book containing a column headed "number," and another headed "residence," another headed "names of voters." The name and street and number of the residence of such voter shall be entered upon each of the poll-books by the clerks in regular succession, in the order in which he voted.

The provisions of section 26 requires one of the judges of election to receive the ballot from the voter and to announce his residence and name in a loud voice and write on the back of the ballot the number of the same in the order

in which it was received, which number shall also be placed opposite the name of the voter in the poll-book. The ballot shall be placed in the box in the presence of the voter, the judges and clerks and in plain view of the public. It is then the duty of the judge or clerk having in charge the registry to mark in the same line on which is found the name of the voter, the word "voted" on the letter "v." If such person so registered shall be challenged or disqualified, the party challenging him shall assign his reasons therefor. Proper oath shall then be administered to him to answer questions and he shall be questioned by the judge or judges, touching the cause of the challenge, and touching any other cause of his disqualification and may also be questioned by the person challenging him. If a majority of the judges are of the opinion that he is the person so registered, his vote shall then be received, but the vote of no one shall be received by the judges whose name does not appear upon the books of registration as a qualified voter.

By section 27 the judges and clerks are authorized to keep the peace and to cause any person to be arrested for any breach of the peace or of the election laws, or for any interference with the progress of the election or the canvass of the ballots, and the officers of the law present shall obey the orders of the judges of election. At every registration and election, each of the political parties shall have a right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such place inside the polling or registration booths as will enable him to see the person as he offers to register or vote, and who shall be protected in the discharge of his duty by the judges of election. Two persons of each political party represented on the ballot, of good character and standing, may be admitted by the judges into the polling places to be present during the canvass of votes and making of returns.

By section 28 the judges of election in the several precincts shall, as soon as the polls are closed, proceed to canvass the votes. The canvass shall not be adjourned or postponed until it shall be fully completed.

Section 29 makes necessary requirements of the judges of election in counting and casting up the ballots, as well as providing for a proper comparison by the clerks of their tallies for the ascertainment of the correct number of votes received by each candidate, which after being obtained, shall be announced in a loud voice to those present.

Section 30 prescribes the manner in which votes cast upon any proposition submitted to the people for adoption shall be counted.

Sections 31, 32, 33, 34 and 35 require the judges of election to make due return of the votes cast at their respective precincts, including the tally sheets, ballots and ballot-boxes. They also prescribe the manner in which such returns shall be made and require the Election Commissioners to securely keep the ballot-boxes for twelve months, not opening or inspecting them or allowing any one else to do so, except upon an order of Court in case of a contested election, or when it shall be necessary to produce them at the trial of any offense committed under the act. At the end of twelve months, the ballots shall be destroyed, provided that if there be a contest of election or prosecution thereunder shall be pending at the expiration of said time, the ballots shall not be destroyed until said contest is finally determined.

Section 36 provides that within eight days after the close of the election, the Board of Election Commissioners shall publicly open all the returns and shall make abstracts of statements of all the votes for the various officers and all votes for or against any proposition which may have been submitted to the people. These abstracts of statements shall be made on separate sheets of paper; it then becomes

the duty of the Board to canvass, add up and declare the result of every election held in such city and transmit the abstract of the same to the Secretary of State or other proper officer, and such abstract or certified copy thereof shall be treated everywhere within the State, and by all public officers with the same force and effect as an abstract of votes now authorized by the laws of the State.

Section 37 requires the Election Commissioners to make out a certificate of election to each person having the highest number of votes for the several offices voted for.

Section 38 provides wholesome and necessary proceedings in case there shall be anything to indicate that a change has been made in the return since being signed by the judges and clerks or of any fraud in any respect touching the same.

By sections 39, 40, 41, 42, 43, 44 and 45, ample provisions are made for the enforcement of the provisions of the act, prescribing the punishment of all persons found guilty of violating the same.

Section 46 provides that in cities not within counties, the Election Commissioners, Deputy Election Commissioner, and judges and clerks of the election and registration shall be paid by the city. Members of the Board shall receive a salary of $2,500 a year, and the Deputy Commissioner, a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the Commissioners shall receive each a salary of $4.00 per day for the time actually employed. All office and other expenses incurred by the Board and all office and other expenses and all costs and expenses of registration or election in such cities shall be paid out of the City Treasury, and all printing, binding, books, stationery, etc., shall be paid for in the same manner.

A majority of the Board of Election Commissioners shall, according to section 47, be considered the act of the Board.

The Commissioners are required to audit all the claims of the judges of election and of registration and all other claims, expenses and accounts, and to draw a warrant therefor upon the proper officer.

The City of St. Louis contains a population of more than three hundred thousand inhabitants and falls within the purview of this Statute, and in accordance therewith the defendants in error were appointed members of said Board for such city by the Governor of the State, qualified and entered upon the discharge of duty. On the 29th of September, 1899, the Board presented to the plaintiff in error certain itemized statements or accounts and requested that they be audited by him as City Auditor, he, at that time, occupying the position of City Auditor of St. Louis. He refused to examine, pass upon and audit them, claiming that the act creating the Board of Election Commissioners was unconstitutional and void.

On the 5th day of January, 1900, the defendants in error, James McCaffery, Lawrence D. Kingsland and George Kobush, caused to be filed in the Supreme Court of the State of Missouri, a petition for a writ of mandamus to require the plaintiff in error to examine, pass upon and audit the accounts so presented for allowance and payment. The petition therefor was brought in the name of the State at the relation of said defendants.

Upon the filing of said petition, James B. Gantt, the Chief Justice of the Supreme Court of Missouri, ordered an alternative writ to issue, returnable on the 9th day of January, 1900. The alternative writ is set out in the printed record of plaintiff in error, and will be found at page 14 thereof.

In obedience to the alternative writ the plaintiff in error, as Auditor of the City of St. Louis, made due return thereto and alleged the unconstitutionality of said act, in that it violated various provisions of the State constitution,

both as to its effect in administration and the formalities observed by the Legislature in its enactment.

In addition to the State constitutional questions raised in the return, plaintiff in error also charged the act with being in conflict with section 1 of the 14th amendment to the constitution of the United States, in that it denied citizens of the United States, who are inhabitants and citizens of the City of St. Louis, and within the jurisdiction of the State of Missouri, the equal protection of the laws.

After issue joined, evidence was taken and the case submitted to the Supreme Court of Missouri upon brief and oral argument. The Court held in its opinion that the act in question did not violate any of the provisions of the State constitution, but did not consider the federal question attempted to be raised, at least, there is nothing said in the opinion of the Court about the federal question involved. One of two things may be said to be true with reference to that feature of the case, either the Court did not consider the federal question properly involved, or by its silence it did not find the act to be in conflict with the 14th amendment to the constitution of the United States, as judgment was rendered for the defendants in error.

In order that the Court may have sufficient of the record to pass upon the questions which we consider involved in the case, we have set out a copy of the act of the Legislature of Missouri, creating the Board of Election Commissioners, together with the petition for writ of mandamus, the return thereto, and the opinion of the State Court.

After the decision of the Supreme Court of Missouri was rendered, plaintiff in error sued out a writ of error to this Court, which is now here for consideration.

The assignments of error made on the part of the plaintiff in error are to be found on another page. By them an

attempt is made to have this Court consider the questions involving the constitutionality of said act as applicable to the constitution of the State of Missouri. Aside from the allegation that the act violates the first section of the 14th amendment to the constitution of the United States, there is no federal question raised, or attempted to be raised, in the case.

The petition for writ of mandamus, filed in the State Court, was as follows:

State of Missouri, ss:

In the Supreme Court, January sitting, 1900.

State of Missouri ex rel. James McCaffery, Lawrence D. Kingsland and George J. Kobusch, Plaintiffs,
vs.
Issac M. Mason, Defendant.
} Petition for Mandamus.

Now comes the State of Missouri on the relation of James McCaffery, Lawrence D. Kingsland and George J. Kobusch, and states that said relators are now and for more than five years have been resident citizens of the State of Missouri, and of the City of St. Louis in said State; and further states that the defendant, Isaac M. Mason, is also a resident citizen of the said City of St. Louis, and that he is now, and ever since the 20th day of August, 1899, has been, the Auditor of the said City of St. Louis, duly elected, qualified and acting as such.

For a cause of action herein against the said defendant the plaintiff states that the said James McCaffery, Lawrence D. Kingsland and George J. Kobusch, the relators herein, are Election Commissioners in and for the said City of St. Louis, severally appointed as such by the Governor of the State of Missouri, under the authority conferred upon him by an act of the General Assembly of said State, entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hun-

dred thousand inhabitants or more; to provide for the creation of a Board of Election Commissioners; to provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19th, 1899; that said named relators were so appointed Election Commissioners by the Governor as aforesaid on the ..... day of August, 1899, for a term of four years therefrom, subject to the advice and consent of the Senate of said State when the same shall be again in session, said appointments having been made during the vacation of the Senate; that said relators severally accepted said appointments and afterwards on the ..... day of August, 1899, duly qualified as such Election Commissioners according to the law in such cases made and provided, and that said relators do now constitute, and ever since the 21st day of August, 1899, have constituted, the Board of Election Commissioners, for the said City of St. Louis; and as such it is their right and duty to do and perform all the things required by said mentioned act to be done and performed by said Board of Election Commissioners, and to exercise all the rights, powers and privileges conferred upon the Election Commissioners by the provisions of said act.

The plaintiff states that the said relators, McCaffery, Kingsland and Kobusch, as said Election Commissioners, are now, and ever since the 21st day of August, have been in the possession of the office, records, files and property set apart for, used by, and belonging to the said Board of Election Commissioners in said City of St. Louis, and that they are now, and ever since the date last above named have been, exercising the powers and performing the duties of such Election Commissioners in accordance with the statutes of this State in such cases made and provided.

Plaintiff states that said Election Commissioners, after taking possession of their said offices on the 21st day of August, 1899, as aforesaid, and while acting as said Board of Election Commissioners, duly appointed according to law, one C. L. Hoblitzelle, as Deputy Election Commissoiner, and to be *ex officio*, the Secretary of the said Board of Election Commissioners; and also afterwards at different times, during the months of August and September, 1899, appointed and employed E. J. Watson, Wm. Adams, M. Buechler, Charles Conrad, C. C. Dixon, J. F. Doerbaum, George Gunsollis, M. J. Keneficke and J. H. Stussel, as clerks, or clerical assistants, in the office of said Election Commissioners; the same being necessary to the prompt and correct performance of the duties incident to said Board of Election Commissioners, and that said Deputy Election Commissioner and said clerks immediately after their several appointments duly qualified as such according to the requirements of the statute in such cases made and provided, and entered upon the duties of their respective offices.

Plaintiff further states that said Election Commissioners, acting as said Board of Election Commissioners, after entering upon their offices as aforesaid, to wit: during the months of August and September, 1899, purchased certain necessary supplies for the use of said Board of Election Commissioners, to wit: stationery, stamps, registration records, office records, towels, brooms and mops, and also incurred certain necessary incidental expenses for keys and repairs of locks, clock rental and storage of election booths and tables; that all said expenditures were necessary to the proper and efficient conduct of the office of said Commissioners, and that all said expenditures were made by said Election Commissioners under the authority conferred upon them by the statute in such cases made and provided. Plaintiff states that the salaries or compensation of all said

Election Commissioners, Deputy Election Commissioner and clerks or clerical assistants, and all said expenditures made by said Board of Election Commissioners, were and are payable out of the treasury of the said City of St. Louis, as is required by law; and that plaintiffs state that in accordance with the law, rules and regulations in such cases made and provided it was and is the duty of said Board of Election Commissioners to make up and certify to the City Auditor of said City of St. Louis stated monthly accounts, properly itemized of the payrolls and other expenses of said Board of Election Commissioners; and upon the same being so certified to the said City Auditor it became, was and is the duty of said auditor to audit said accounts in due form of law, and to issue his proper warrants in payment thereof to the person or persons entitled thereto, so that the same may be lawfully paid out of the treasury of the said city; for plaintiff states that the salaries of said Commissioners and the expenditures made by them, and the compensation due the appointees and employes of said commissioners, cannot be lawfully paid out of the said treasury until said auditor shall first audit said accounts and draw his warrants for the payment thereof.

Plaintiff further states that on the 29th day of September, 1899, the said Board of Election Commissioners, in due form of law, and in accordance with the rules and regulations applicable to such cases, duly certified to the defendant herein, as the City Auditor of the said City of St. Louis, three certain itemized statements or accounts to be audited by him as follows, to wit:

First. A statement or account showing separately the several sums due the Commissioners, Deputy Commissioner and clerks or clerical assistants from said City of St. Louis for salaries or compensation due them as provided by law for services rendered by them during the month of August, 1899, amounting in the aggregate to $555.21.

Second. A statement or account showing separately the several amounts due to said Commissioners, Deputy Commissioner and the clerks or clerical assistants of said Board of Election Commissioners from the said City of St. Louis for the salaries or compensation due them respectively for the month of September, 1899, amounting in the aggregate to $1,297.65.

Third. An itemized statement or account of the expenditures made by the said Board of Election Commissioners during the months of August and September, 1899, for the use of said Board, being the stationery, records, etc., hereinabove set forth, amounting in the aggregate to $1,718.71, which certified account was accompanied by the proper vouchers in each instance.

Plaintiff files herewith copies of said three statements or accounts marked as Exhibit "A," "B," and "C."

Plaintiff states that all said named statements or accounts were duly presented to said defendant, as auditor aforesaid, on or about the first day of October, 1899; and plaintiff states that upon receiving said accounts or statements it then became and was the duty of the defendant, as said auditor, to forthwith proceed to examine and audit the said accounts and to draw his warrants therefor as aforesaid; for plaintiff says that at all the dates aforesaid there was, and now is, sufficient money in the treasury of the said City of St. Louis appropriated and set apart for the payment of the salaries of said Election Commissioners, Deputy Commissioner, and clerks or clerical assistants, and the expenses of said Board, as stated and set forth in said three certified accounts. But plaintiff states that notwithstanding the premises the defendant arbitrarily and unlawfully refused to audit said accounts, or either of them or any part thereof, and still refuses to audit the same or any part thereof, or to issue or cause to be issued, any warrant whatsoever for the payment of said certified accounts or

either of them, or any part thereof, and wholly fails and refuses to perform his duty in that behalf as the City Auditor of the said City of St. Louis. Plaintiff states that said defendant, as Auditor, has not made to said Election Commissioners, or to any one, any objection to the form or sufficiency of any of said accounts so certified to him as aforesaid, but has informed the said Commissioners in writing that he refuses to audit said accounts, or any of them, on the advice of the City Counsellor of the said City of St. Louis, and for no other reason. Plaintiff states that the salaries or compensation of said Election Commissioners, Deputy Commissioner, and clerks or clerical assistants of said Board of Election Commissioners, together with the incidental expenses of said Board, for the months of October and November, 1899, are also all past due and unpaid; but that said Election Commissioners have not certified the accounts for the same to the defendant for the reason that the defendant has declared to and informed the said Commissioners that he will not audit any accounts for, or draw his warrants to pay any salaries or compensation due said election officers, or for any expenses incurred by said Board of Election Commissioners in the conduct of their office.

Plaintiff states that by reason and on account of said arbitrary and unlawful action of the defendant, as Auditor aforesaid, the said Election Commissioners, Deputy Commissioner, and clerks or clerical assistants have been performing their public duties since the 21st day of August, 1899, without receiving any pay whatever for their services, and that the necessary expenses of said Board of Election Commissioners in procuring necessary stationery, records, etc., for the proper and correct conduct of their said office remain wholly unpaid; that by reason of the premises and of the declared intention of the defendant to continue to refuse to audit future accounts of every kind which may be certified to him by said Board of Election Commissioners

and relators herein, it is made impossible for said Election Commissioners to efficiently and properly perform their duties and carry on and conduct their said offices; that the said unlawful conduct of the defendant is demoralizing the working force in said office, and is greatly embarrassing said Election Commissioners in the performance of their duties, greatly to the public detriment.

Plaintiff states that it is highly important and necessary that said Election Commissioners should forthwith make preparation for the registration of voters in said city, and to make such registration and also to make all necessary provisions for holding the elections to be held in said city during the year 1900; that in the performance of this public work imposed upon them by law, it is necessary for said Election Commissioners to appoint judges and clerks of election, and other election officials as required by law, and to procure the necessary stationery, books, records, etc., for the proper and lawful conduct of said elections; but plaintiff says that the said Election Commissioners cannot properly and efficiently perform their said duties because of the said unlawful action, and threatened action of said defendant, as Auditor, in refusing to allow said Election Commissioners to use the public moneys appropriated and set apart for their use as aforesaid.

In view of the whole premises, plaintiff comes now and prays this Honorable Court to issue its writ of mandamus commanding the said defendant, as City Auditor of the said City of St. Louis, to proceed forthwith to examine and audit the said three itemized accounts certified to said defendant by said Board of Election Commissioners on the 29th day of September, 1899, as hereinbefore set forth, and to issue warrants as required by law for the payment of said accounts, or to show cause to this Court why he should not do so, and the plaintiff prays the Court for all such further and additional orders and judgments against said defendant

as may be necessary and proper, and that the defendant be adjudged to pay the costs of this proceeding.

EDWARD C. CROW, Attorney-General.

W. J. STONE, of Counsel.

RETURN TO ALTERNATIVE WRIT.

The return to the alternative writ of mandamus issued out of the Supreme Court of Missouri is in words as follows:

"In the Supreme Court. October term, 1899.

State of Missouri ex rel. James McCaffery, L. D. Kingsland, and Geo. J. Kobusch, Plaintiffs,

vs.

Issac M. Mason, Defendant.

Return of defendant to alternative writ.

Now comes Isaac M. Mason, defendant in the above entitled cause, and for return to the alternative writ issued therein, says:

He admits that the relators are now, and for more than five years last past have been, resident citizens of the State of Missouri, and of the City of St. Louis in said State, and that the said defendant is also a resident citizen of said City of St. Louis, and that he now is, and ever since the 20th of August, 1899, and some time before that has been, the auditor of the said City of St. Louis, duly elected, qualified and acting as such.

He admits and avers that the relators' sole claim to be and to compose the Board of Election Commissioners for the City of St. Louis, and to have warrants drawn by him as auditor against the City of St. Louis, and to have their claims for salaries and office expenses, audited by him as auditor of said city, is under and by virtue of the pretended act of the General Assembly of this State, set out by relators and entitled "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a Board of

Election Commissioners; to provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts or parts of acts in conflict or inconsistent herewith;" that said act purports to have been approved June 19th, 1899, and he avers that it is the same pretended act printed on pages 179 and following the session acts of the Fortieth General Assembly of this State, for 1899, under the title, "House bill No. 760, Elections: In Cities of 300,000 Inhabitants or More."

He denies that relators are entitled to have the claims set out by them, or any of them, audited by him as auditor of the said city, or to have warrants drawn thereon. He avers that the above cited pretended act is the sole authority under which relators can or do claim to hold the office of members of the Board of Election Commissioners of the City of St. Louis, and he avers that said pretended act is null and void, and unconstitutional, and is not, and never was, enacted, and is not, and never became, a valid law of the State of Missouri.

And defendant avers that at the regular session of the aforesaid Fortieth General Assembly of the State of Missouri, a member of the House of Representatives, to wit: James P. Nesbitt, on March 3, 1899, said House then being in session, introduced a bill entitled "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein." That said bill was numbered House bill No. 760. It will hereafter, for brevity, be referred to as "House bill No. 760:" or "The Nesbitt Bill."

That among other provisions contained in said Nesbitt bill, as originally introduced, it was provided that the Governor, by and with the advice and consent of the Senate, should appoint for each city now having or which hereafter may have 300,000 inhabitants or more, *one* Election Commissioner and no more, who should hold his office for the term of four years and until his successor was commissioned and qualified. That said Commissioner should make all necessary rules and regulations not inconsistent with the act, with reference to the registration of voters and conduct of elections, and should have sole charge of and make provision for all elections, general and special, local, municipal, State and county, and of all others of every description, to be held in such city or any part thereof, at any time. He was authorized to divide the city into election precincts, and was directed and empowered to select and choose three (3) electors as judges, and two (2) clerks of election for each precinct, one of said judges and one of said clerks of election to belong and to be a member of the party of opposite politics to said Election Commissioner; said judges and clerks also to act as registration and canvassing officers in their respective precincts.

It was further provided that two justices of the peace of such city, of opposite politics, to be designated and selected by the Election Commissioner, and said Election Commissioner should constitute a Board of Appeals to hear applications and appeals to be placed on the registry of voters of persons who had applied for registration and been rejected by the precinct registers, and who may also register qualified persons applying therefor. Said Board of Appeals was also constituted the Board of Canvassers to open and canvass the returns of elections. No clause or section of said bill purporting to repeal any other laws or acts save as such acts should be in conflict with the provisions of said bill.

A copy of said Nesbitt bill, being House bill No. 760 aforesaid, as originally introduced, was printed under authority of the said House of Representatives, and is herewith filed, and marked Exhibit "A," and prayed to be considered, examined and referred to as a part of this return as fully as if set out at length herein.

Defendant states that said bill No. 760 was read in the House of Representatives the first time on March 7th, and referred to the Committee on Elections March 7th, 1899, reported from said committee with recommendation that it do pass, with accompanying amendments, March 24th, 1899 but that the "accompanying amendments" proposed by the said committee were never agreed to nor acted upon when said bill No. 760 was taken up for engrossment on April 15, 1899. That on said last named date, a motion was offered by a member of the House, as follows: "Amend House bill No. 760 by striking out all of said bill after the enacting clause and inserting the following in lieu thereof." That the so-called amendment then offered was in fact a substitute for the whole of the Nesbitt bill, leaving only the title and the enacting clause of the original Nesbitt bill, and was an entire change of the original purpose and object of said Nesbitt bill. That among other provisions of the proposed amendment, the Governor was authorized, within thirty days after the act becomes a law, by and with the advice and consent of the Senate, to appoint for each of said cities to which the law was to apply, a Board of Election Commissioners, to be composed of three (3) members, who should hold their office for the term of four years, and until their successors were commissioned and qualified; one of the Commissioners to be a member of and belong to the leading party politically opposed to that to which the Governor belongs. Said Board to have charge of registration and elections in cities to which the act was to apply, to divide the city into voting precincts, to appoint the judges and clerks of election

in the precincts, who should also be registers and canvassers in the voting precincts; act as a Board of Appeal and Registration, and canvass the election returns. The last section of said proposed amendment also provided that "All acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled 'An act to create a Board of Election Commissioners, etc.,' approved May 31, 1895, is hereby repealed."

In brief, the proposed amendment was an entire change of the original bill in all of its main features and objects, a particularization of which here would unduly lengthen this return: reference is therefore made to the same, as printed in the journal of the said House of Representatives at pages 1042 to 1059, both inclusive, and that part of said journal, namely, pages 1042 to 1059, is prayed to be taken as a part hereof as fully as if set out at length, and an examination of said proposed amendment and comparison of the same with the original bill will show that it was, in fact, not only a substitute for the original bill, and not a mere amendment thereof, but was, in fact and in effect, a new bill under the title and with the enacting clause of the Nesbitt bill, and was an entire change in the original purpose of the original Nesbitt bill. Said proposed amendment as now found printed in the journal of the House as aforesaid, was not, however, in fact printed until after the adjournment of that session of the General Assembly, to wit, until after May 22, 1899, and was never printed during the session of the Fortieth General Assembly.

On April the 15th the said so-called amendment to said bill was adopted by the House, and said House bill No. 760 was then ordered engrossed and printed by the House; but in fact was neither printed nor engrossed, as required by section 29 of article 4 of the constitution of this State.

Defendant states that afterward, on April 20, 1899, the

said House adopted said proposed amendment, and purported to pass said bill, but as amended as aforesaid, and under the original title as aforesaid, and that afterwards, and on the same day, purported to amend the title thereto by striking out the words "to create the office of Election Commissioner," where the same occurs therein, and insert in lieu thereof the words "to provide for the creation of a Board of Election Commissioners," and by striking out the word "his" where it occurs, and inserting in lieu thereof the word "its," and by adding at the end of the title the words "and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Defendant further avers that it is ordained by article IV of the constitution of this State, among other things, as follows:

Section 25. No law shall be passed, except by bill, and no bill shall be so amended, in its passage through either House, as to change its original purpose.

Section 26. Bills may originate in either House, and may be amended or rejected by the other; and every bill shall be read on three different days in each House.

Section 27. No bill shall be considered for final passage unless the same has been reported upon by a committee, and printed for the use of the members.

Section 28. No bill (except * * * ) shall contain more than one subject, which shall be clearly expressed in its title.

Section 29. All amendments adopted by either House to a bill pending or originating in the same, shall be incorporated with the bill by engrossment, and the bill thus engrossed, shall be printed for the use of the members before its final passage. The engrossing and printing shall be under the supervision of a committee, whose report to the House shall set forth, in writing, that they find the bill truly

engrossed, and that the printed copy furnished to the members is correct.

Section 31. No bill shall become a law, unless on its final passage the vote be taken by yeas and nays, and the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each House be recorded thereon as voting in its favor.

Section 32. No amendment to bills by one House shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the journal thereof, etc. * * *

Section 37. No bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session; and before such officer shall affix his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that, if no objections be made, he will sign the same, to the end that it may become a law. The bill shall then be read at length, and if no objections be made, he shall, in the presence of the House, in open session, and before any other business is entertained, affix his signature, which fact shall be noted on the journal, and the bill immediately sent to the other House. When it reaches the other House, the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed in every respect as in the House in which it was first signed. * * *

Defendant avers that in the purported passage of the said House bill No. 760 through and by the House, each and all of the foregoing provisions of the constitution of this State were not only not complied with, but were violated in the following, among other particulars, to wit:

1. Said purported bill was amended in its alleged pas-

sage through the House of Representatives so as to change its original purpose.

2. It was not read on three different days in each House.

3. It was considered for final passage in the House without having been reported upon by a committee, and without having been printed for the use of the members of the House.

4. It contained more than one subject, and the subject was not clearly expressed in its title.

5. The amendments adopted by the House of Representatives and originating in said House, were not incorporated in the bill by engrossment, and the bill as engrossed by the House was not printed for the use of the members of the House before the final passage thereof; nor did any committee of said House set forth by report in writing that they found the bill truly engrossed, and that the printed copy furnished to the members was correct, but on the contrary, the Committee on Engrossed Bills in the House to which was referred said bill, reported, under date of April 20, 1899. and at page 1102, that said bill had not been truly engrpsed, and that the printed copies thereof furnished to the members were not correct. Defendant further alleges that this was the only reference of this bill to any committee by the House for the purpose of engrossment and printing, and that the aforesaid report was the only report made by any committee to said House on this bill.

6. That when said pretended bill, as amended by the House, was placed upon its final passage in the House, no vote was taken by yeas and nays, nor were the names of the members voting for and against said pretended bill as it purported to have been amended entered upon the House journal, nor was it recorded thereon that a majority of the members elected to the House voted in favor thereof.

7. That the only printed copy of what purported to be

said bill No. 760, as amended by the House, placed in the hands of the members of the House or of the Senate for their use was that herewith filed and marked Exhibit "B," which is prayed to be taken as a part of this return as fully as if set out at length and in full.

8. That said bill was not reported upon by a committee, and was not printed for the use of the members of the House of Representatives before it was considered for final passage by the said House, as required by section 27 of article IV., of the constitution of this State; nor was the title of said bill, as amended by the said House of Representatives, ever printed at all for the use of the members of said House or for the use of the members of the Senate and said General Assembly.

And defendant further avers that in the purported passage of House bill No. 760 through and by the House, each and every one of the foregoing cited provisions of the constitution of this State were not only not complied with, but were violated.

And defendant further avers that after it was pretended and assumed that said bill had passed the House of Representatives, there was transmitted to the Senate, by the House, for its action, and received by the Senate on April 21, 1899, an alleged bill which purported to be, but was not, the bill pretended to have been passed by the House under the number and designation of House bill No. 760, and what purported to be printed copies of said House bill No. 760, as purported to have been passed by the House, were transmitted to the Senate for the use of the members of the Senate, being the same as Exhibit "B" before referred to, and none other; that being the only and sole document purporting to be a printed copy of said House bill No. 760 ever furnished or printed for the use of the members of the Senate by any committee or officer or other person or authority prior to the alleged passage of said bill. Defendant avers

that said printed document is not a true copy of the bill, as alleged to have been amended and passed by the House of Representatives, and does not contain the title of the bill as amended and adopted by the House, but contains, word for word, the title of the bill as originally introduced by Mr. Nesbitt, and hereinbefore set out, and was misleading, incorrect and illegal, and not the bill No. 760, which was pretended to have been passed by the House.

Defendant further states that the bill which was received on said 21st day of April, 1899, by the Senate from the House, and which purported to be the bill which had passed the House, and which was designated as House bill No. 760, reported to the Senate under this title and no other, namely: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

That, as appears by the entry in said journal, the officer of the House who delivered the said bill to the Senate and who stated that the House asked the concurrence of the Senate thereto, added, after reciting the title of the bill as aforesaid, the words "Title amended," but the defendant avers that no amendment to the title was on the bill as presented to the Senate, no amendment was engrossed with or on the said bill, but the engrossed copy thereof presented to the Senate from the House, for the action and concurrence of the Senate was the original as last aforesaid, and not otherwise; nor did the messenger of the House show to the Senate, nor did the House ever inform the Senate, how or in what respect or particular the title was amended, but at all times when said bill was before the Senate for its action, as shown by its journal, and in fact, it was under the original title as aforesaid, and not otherwise.

That the next entry relating to said bill upon the journal of the Senate is as follows, under date of April 24, 1899: "House bill No. 760 entitled, 'An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,' was taken up and read the first time."

That the next entry relating to said bill is of date April 25, 1899, and appears upon the journal of the Senate of that date as follows, namely: "House bill No. 760 entitled, 'An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,' was taken up, read second time and referred to Committee on Privileges and Elections."

The next entry relating to said bill is of date May 20th, 1899, when the following entries appear upon the journal of the Senate, of its proceedings of that date, namely: "Senator Haynes, from the Committee on Privileges and Elections, submitted the following reports, which were read: (among others) 'Mr. President: Your Committee on Privileges and Elections, to which was referred House bill No. 760, entitled, 'An act to provide for the registration of voters, etc., in cities now having, or which hereafter may have, 300,000 inhabitants or more,' begs leave to report that it has examined the same and recommends, by a majority vote, that it do not pass, and a majority of the committee are of the opinion, as heretofore reported, that the same cannot be consid-

ered because of the Morton resolution.' Respectfully submitted, W. H. HAYNES, Chairman."

"On motion of Senator Morton, House bill No. 760, entitled, 'An act to provide for the registration of voters in cities now having or which may hereafter have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein,' was taken up for third reading." * * *

(Here follows votes on points of order.)

"Senator moved that the rules be suspended and House bill No. 760 be read third time and put upon its passage. * * * The question recurring upon the suspension of the rules, roll was called and the motion prevailed by the following vote." (Here follows names of Senators voting and those absent.)

"The question recurring upon the motion of Senator Morton, that House bill No. 760 be read third time and placed on its passage." (Here follows dilatory motion.) "The question recurring upon the motion to place House bill No. 760 on third reading and passage. The motion prevailed. The roll was called and House bill No. 760 was passed by the following vote." (Here follows names of Senators voting for and against and of absent Senators.) "The President declared the bill passed. The title of the bill as amended was read and agreed to. Senator Farris moved to reconsider the vote by which the bill passed. Senator Fields moved to lay that motion on the table. The latter motion prevailed."

That the next entry relating to said bill is of date Monday, May 22, when the following entries are upon the journal of the Senate, relating to said bill No. 760:

"The President announced the reception from the House

of Representatives enrolled House bill No. 760, 'An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of Election Commissioner, to provide for his appointment and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein.' That the same had passed both branches of the General Assembly; that all other business would be suspended and the bill read at length; that unless objection be made, he would sign the same to the end that it become a law, and directed the Secretary to read the bill. The bill was read at length by the Secretary." (Here follows protests.) "Whereupon the presiding officer, in the presence of the Senate, in open session, and no other business intervening, affixed his signature thereto, and the bill was immediately returned to the House."

And this defendant avers that the above are the only material entries upon the journal of the Senate relating to said bill, and he files herewith a certified copy from the Secretary of State of all the entries relating to said bill as appear on the journal of the Senate, which certificate is marked Exhibit "C" and prayed to be taken as a part of this return, as fully as if set out at length, and defendant avers that the above Senate entries are a true, complete and correct record of all that took place in the Senate in relation to said bill.

And this defendant avers that on each and every occasion, and at every time when said House bill No. 760 was read in the Senate, it was read under the title last aforesaid, and the title last aforesaid was the only title read in connection therewith in the Senate, and at no time was any House bill read in or passed by the Senate of the Fortieth General Assembly of the State of Missouri, or signed by its presiding officer, under the title, "House bill No. 760, an act to provide

for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent therewith."

Wherefore, this defendant says that the purported act, under the title set out by the relators in their petition, and under the title set out in the printed copy of the session acts of the Fortieth General Assembly as aforesaid, never, in fact, was before the Senate for its consideration, did not receive its concurrence, was not signed by its presiding officer, and was not enacted into a law of this State.

And defendant avers that there was read in the Senate as House bill 760, on three different days, an entirely different bill from that pretended to have been passed by the House, to wit, a bill under the following title: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of Election Commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein," and none other, which said bill was not House bill No. 760, as pretended to have been passed by the House, nor was said bill so pretended to have been passed by the House ever before the Senate, nor was the bill, as purported to be passed by the House, ever printed as required by the constitution for the use of the members of the Senate before its passage by said Senate.

And defendant avers that said bill, after its purported passage by the Senate, was signed by the President of the Senate; that the bill, as signed by the President of the Sen-

ate, was the bill, as purported to be passed by the Senate, and not as purported to have been passed by the House, and the bill purported to be passed by the House and signed by the Speaker thereof, was not the bill signed by the President of the Senate.

And defendant still further avers that in the purported passage through the Senate of the pretended bill heretofore referred to, the foregoing cited provisions of the constitution were violated in the following, among other particulars, to wit:

1. Said purported bill was not read on three different days in the Senate.

2. That the same had not been printed for the use of the members of the senate before being considered for final passage.

3. That the same contained more than one subject, and that said subject was not clearly expressed in the title.

4. That the amendments adopted by the Senate to the same were not incorporated therein by engrossment, nor was said pretended bill engrossed, nor was it printed for the use of the members of the Senate before its final passage by the Senate, nor did any committee report to the Senate in writing that they found said pretended bill truly engrossed or that any printed copy thereof furnished to the members was correct.

5. That on the final passage of said pretended bill, as purporting to have been amended by the Senate, the vote thereon was not taken by yeas and nays, nor were the names of members voting for or against said pretended bill entered upon the Senate journal, nor was it reported upon said journal that a majority of the members elected to the Senate voted in favor of said pretended bill as it purported to have been amended.

6. The purported amendment to the title purported to have been made by the House was not reported to or before

the Senate, and the purported amendment to the title by the Senate was not reported back to the House nor concurred in by it, and the bill signed by the presiding officer of the Senate was under the original title and not under a title as amended by either the House or the Senate.

And defendant avers that the foregoing cited constitutional provisions were not only not complied with, but were violated in every other respect in the alleged passage of said bill through the Senate.

Defendant further avers that the Chief Clerk of the House of Representatives did not present the pretended bill purporting to have been passed by the House in person to the Governor on the same day on which it was signed, and enter the fact upon the journal of the House, as required by section 38 of said article IV of the constitution.

Wherefore defendant avers that by reason of non-compliance with and violation of the hereinbefore cited provisions of the constitution of this State, said pretended House bill No. 760 was never lawfully passed, and is of no force, effect or validity as a law.

Notwithstanding said facts and the illegality of all the steps and proceedings attending its pretended passage through the House of Representatives and Senate as aforesaid, defendant is informed and believes and states on information and belief that said pretended House bill No. 760 purports to be enrolled and what purports to be a true copy of the enrolled bill and purporting to have been approved by the Governor June 19, 1899, printed and published and issued by the Secretary of State as an act of the General Assembly of this State, under the following title, to wit:

"H. B. 760. ELECTIONS: In cities of 300,000 inhabitants or more. An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment, and

define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein and to repeal all acts and parts of acts in conflict or inconsistent herewith."

Defendant avers that no bill, law or act under the title last aforesaid or with the provisions in said pretended act contained, or of the tenor and effect of said pretended act, ever passed either or both Houses of the General Assembly of this State or was ever enacted into law.

Defendant further avers that by sections 53 and 54 of said article VI. of the constitution of this State, it is ordained as follows:

"Section 53. The General Assembly shall not pass any local or special law: * * *

Regulating the affairs of counties, cities, townships, wards or school districts;

For the opening and conducting of elections, or fixing or changing the places of voting;

Creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts;

In all other cases where a general law can be made applicable, no local or special law shall be enacted; and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject. * * *

Section 54. No local or special law shall be passed unless notice of the intention to apply therefor shall have been published (etc. * * * ) and the notice shall be recited in the act according to its tenor."

And by sections 2, 5, 8, 10 and 12 of article VIII of the same constitution, it is ordained as follows:

Section 2. Every male citizen of the United States, and

every male person of foreign birth, who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of 21 years, possessing the following qualifications, shall be entitled to vote at all elections by the people:

First—He shall have resided in the State one year immediately preceding the election at which he offers to vote.

Second—He shall have resided in the county, city or town where he shall offer to vote, at least 60 days immediately preceding the election.

Section 5. The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise.

Section 8. No person while kept at any poor house, or asylum at public expense, nor while confined in any public prison shall be entitled to vote at any election under the laws of this State.

Section 10. The General Assembly may enact excluding from the right of voting, all persons convicted of felony or other infamous crime, or misdemeanors connected with the exercise of the right of suffrage.

Section 12. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding his election or appointment.

Section 7, of article IX is as follows: "The General Assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipal

corporations of the same class shall possess the same powers and be subject to the same restrictions."

And by sections 1, 10 and 12 of article X of said constitution it is ordained:

Section 1. The taxing power may be exercised by the General Assembly for State purposes, and counties and other municipal corporations, under authority granted to them by the General Assembly, for county and other corporate purposes.

Section 10. The General Assembly shall not impose taxes upon counties, cities, towns, or other municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes; but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

Section 12. No county, city * * * or other political corporation or subdivision of the State, shall be allowed to become indebted in any manner or for any purpose to the amount exceeding in any year the income and revenue provided for such year without the assent of two-thirds of the voters thereof voting at an election to be held for that purpose."

And by section one (1) of the Fourteenth Amendment to the constitution of the United States, it is ordained that no State "shall deny to any person within its jurisdiction the equal protection of the laws."

Defendant alleges that said pretended House bill No. 760 aforesaid and said pretended act last above referred to violate and are in conflict with each of the above recited and quoted constitutional provisions, both of the constitution of this State and of the United States, and are null and void.

That said pretended act, contrary to the above cited constitutional provisions, is special legislation—is a denial of the right of self-government—is an attempt to divert and

unlawfully apply public revenues, and subjects them to the demands of unauthorized persons, and diverts the revenues derived from taxation to purposes and at the will of persons other than those for which they were assessed, levied, paid and collected, and deprives the citizens of the United States residing in the City of St. Louis of their right to the equal protection of the laws, and imposes on citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office and is null and void.

Defendant further states that section 5 of article VIII of the constitution of this State is as follows: "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise."

That said pretended act of June 19, 1899, hereinbefore set forth, violates said provision of the said constitution in that it ignores the classification made by the said provision for the registration of voters in this State, and provides that "in all cities in this State now having or which hereafter may have 300,000 inhabitants or more, there shall be a registration of all the qualified voters, and said registration and mode of conducting the election held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent herewith," and by section 49 attempts to repeal the act entitled, "An act to create a Board of Election Commissioners, etc.," approved May 31, 1895.

That said pretended act not only violates and ignores the constitutional classification of cities and counties for registration purposes, but attempts to establish a different classification by providing under the guise of an attempted general law, a special and different system of registration

and conducting elections in the City of St. Louis, from that provided by the constitution of the State, and different from that controlling other cities and counties in this State having a population of over 100,000 inhabitants.

That said pretended act is a special act applicable only to the City of St. Louis, and not a general law, and was not passed in accordance with the provisions of the constitution of this State as to special legislation, to wit: Section 54, article IV and is in violation of the other provisions of the constitution prohibiting special legislation and classification of cities herein set forth, and is unconstitutional and void.

Defendant further avers that under and by virtue of the 5th section of the 8th article of the constitution of this State, hereinbefore cited and quoted, the General Assembly of this State enacted a law entitled, "An act to create a Board of Election Commissioners in cities now having or which hereafter may have over 100,000 inhabitants; to provide for the appointment of the same; to define the duties of such Board; to provide for the registration of all voters in such cities; to govern elections therein, defining offenses and providing for punishment thereof; prescribing penalties for violating the provisions of this act; and abolishing the office of Recorder and Deputy Recorder of Voters." That said act was duly approved by the Governor of this State May 31, 1895, and took effect and was of force August 25, 1895, and will be found in the Session Acts of this State for extra session, 1895, at pages 5 to 43, inclusive.

That among other provisions of said act, it was enacted in the second section thereof, that a Board of Election Commissioners be and is created for each city that is governed by the provisions of said act, composed of three members, who should be appointed as follows: Two of said Commissioners to be appointed by the Governor, one of them to be by him designated as the chairman of the Board, and who shall hold his office for the term of four years, or until his

successor is appointed and qualified, the other or second Commissioner for the term of two years, and until his successor is appointed and qualified; the third Commissioner to be appointed by the mayor of the city, the person so appointed to be a member of the leading political party opposed to that to which the chairman appointed by the Governor belongs, who shall be secretary of said Board, and shall hold his office for the term of four years, and until his successor is appointed by the mayor and has qualified.

That the City of St. Louis, being one of the cities of this State to which said law applies, a Board of Election Commissioners was duly appointed under said law some time before 1899 and before the enactment of the laws hereinafter referred to as the "Cardwell act."

That the terms for which said Commissioners were respectively appointed have not yet expired, nor have any successor, or successors, been appointed or qualified for or to either of them, but the defendant is advised that a majority of them have abandoned their claim to said office under said law and their appointment by virtue of it.

Defendant further states that the law above referred to is the only law of this State providing for the registration of all voters in cities and counties of this State having a population of more than one hundred thousand inhabitants; that said law is now, and since its taking effect has been, in full force and effect, and applies to said City of St. Louis, and is unrepealed and that the same has been amended by the General Assembly of the State of Missouri only in immaterial respects, until an attempted amendment by the act referred to as the Cardwell act in 1899.

That at the fortieth session of the General Assembly of this State said act of May 31, 1895, was further attempted to be amended by an act entitled, "An act to amend an act entitled, 'An act to create a Board of Election Commissioners in cities now having or which hereafter may have over

100,000 inhabitants; to provide for the appointment of the same, to define the duties of such Board; to provide for the registration of all voters in such cities; to govern election therein, defining offenses and providing for punishment thereof; prescribing penalties for violating the provisions of this act; and abolishing the office of Recorder and Deputy Recorder of Voters,' approved May 31, 1895, as amended by Session Acts, approved March 8, 1897, and March 23, 1897, and March 26, 1897," which act was approved June 19, 1899, Session Acts of Missouri, 1899, pages 197 to 199, inclusive, the bill for which act was numbered House bill No. 785, was introduced by Representative Cardwell, and has been and will hereafter be referred to for brevity as "The Cardwell Act." Said amendment changes the manner of appointment of the members of the Board and of employment of clerical assistants.

Said Cardwell act last above referred to was approved by the Governor June 19, 1899, and, if a valid law, was of force and effect on August 21, 1899, the Fortieth General Assembly having adjourned *sine die* on May 22, 1899.

That other than as hereinabove set out, no amendments have been made to the aforesaid act of May 31, 1895.

Defendant further states that no appointments to the Board of Election Commissioners have been made for the City of St. Louis under the aforesaid Cardwell act of June 19, 1899. But defendant avers that the act of May 31, 1895, and its amendments, is the only law relating to and governing registration and elections in said City of St. Louis, and the said City of St. Louis is and will be liable only for the salaries and expenditures of Commissioners who are appointed and have qualified thereunder.

And defendant avers that the so-called Nesbitt law purports to repeal the whole of the aforesaid act of May 31, 1895, section 49 of the Nesbitt law being as follows: "Sec-

tion 49. All acts or parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled, 'An act to create a Board of Election Commissioners,' etc., approved May 31, 1895, is hereby repealed."

Defendant avers that the so-called Nesbitt law and Cardwell act both purport to have passed the House and Senate of the Fortieth General Assembly on the same day and at the same session and to have been approved on the same day, to wit, June 19, 1899, and under the constitution of this State (there being no emergency clause to either of them) each, if valid, was of force and in effect on the same day, to wit, August 21st, 1899; that the same are so inconsistent with each other that neither can take effect, and the act of May 31, 1895, and the amendments heretofore referred to as made to it prior to those undertaken to be made by the Fortieth General Assembly of this State, are the only laws now in force and effect in this State relative to appointment of Election Commissioners for cities of over 100,000 population, to which class of cities the City of St. Louis belongs.

For further return this defendant denies that any appropriation has been made for these relators, and he avers that no appropriation, available for the payment of any members of any Board of Election Commissioners appointed under the Nesbitt bill, for the City of St. Louis, or for the payment of their office and clerical expenses, has ever been made by the Municipal Assembly of the City of St. Louis, and he avers that the only appropriation made is for the Election Commissioners appointed and provided for under the act of May 31, 1895, heretofore referred to, and the amendments made thereto prior to January 1, 1899, and for the payment of their office expenses and clerical assistants, and he denies that the relators in this case are the successors in office of the members of the Board of Election Commissioners of the City of St. Louis, who have been appointed

under the act of May 31, 1895, and its amendments, and he denies that the appropriation made by the Municipal Assembly of the City of St. Louis for the payment of the salaries and office expenses and clerical assistants of the Board of Election Commissioners of the City of St. Louis, so appointed as aforesaid under said act of 1895, is available, or subject to his warrant, as Auditor of said city, for the payment of the salaries, office expenses or clerical assistants of relators claiming appointment under the pretended act and so-called Nesbitt act of June 19, 1899.

And having made full return, defendant asks to be hence discharged with his costs in his behalf expended.

ISAAC M. MASON,

As Auditor of the City of St. Louis, Defendant.

B. SCHNURMACHER,

City Counsellor, for Defendant.

GEO. D. REYNOLDS,

NOBLE & SHIELDS,

MORTON JOURDAN,

Of Counsel."

## OPINION OF SUPREME COURT OF MISSOURI.

The opinion of the State Court was written by Judge Sherwood, and is as follows:

This is an original proceeding in this Court, its object being to compel the City Auditor to audit a certain bill of expenses incurred by relators, as the Board of Election Commissioners, in and about the performance of their official duties in their capacity as such commissioners.

The return of the City Auditor, giving reasons for refusing to audit the bill in question, states in substance that the law under which such Election Commissioners were appointed and are acting is constitutionally invalid for that in the course of its passage such proceedings were had as violated the constitution of this State in several particulars.

The objections thus raised to the constitutional validity of the litigated act will now be discussed. That act is known as house bill No. 760, and is entitled "An act to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein and to repeal all acts and parts of acts in conflict or inconsistent herewith." Laws 1899, 170.

Section 37 of article IV of the constitution declares that "No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses

in open session; and before such officer shall affix his signature to any bill, he shall suspend all other business, declare that such bill will now be read, and that, if no objection be made, he will sign the same to the end that it may become a law. The bill shall then be read at length, and if no objections be made, he shall, in the presence of the House, in open session, and before any other business is entertained, affix his signature, which fact shall be noted on the journal and the bill immediately sent to the other House. When it reaches the other House the presiding officer thereof shall immediately suspend all other business, announce the reception of the bill, and the same proceedings shall thereupon be observed, in every respect, as in the House in which it was first signed. If in either house any member shall object that any substitution, omission, or insertion has occurred, so that the bill proposed to be signed is not the same in substance and form as when considered and passed by the house, or that any particular clause of this article of the constitution has been violated in its passage, such objection shall be passed upon by the House, and if sustained the presiding officer shall withhold his signature; but if such objection shall not be sustained, then any five members may embody the same, over their signatures, in a written protest under oath against the signing of the bill. Said protest, when offered in the House, shall be noted upon the journal, and the original shall be annexed to the bill to be considered by the Governor in connection therewith."

Commenting on that portion of the organic law, when it first came under review and within four years after the adoption of the constitution, this Court said:

"We are convinced that the initial clause of the section that 'no bill shall become a law until the same shall have been signed by the presiding officer of each of the two Houses in open session' is mandatory, though it is quite

evident that the mandate of the constitution would be obeyed, so far as concerns proper authentication of the bill, when it receives the signature of the respective presiding officers in open session; but we do not regard the other clauses of the section under review as mandatory, for it is to be observed that those clauses do not declare that 'no bill shall become a law' if the presiding officers or the members fail to perform the duties which the residue of the section imposes, but the only penalty directly expressed is that contained in the initial clause just noted. No inference is, however, to be drawn from this that the residue of the section is not to be obeyed, for certainly the duties it enjoins are clearly set forth. The framers of the constitution were evidently of the opinion that they might safely intrust the supervision of the details specified in the remaining clauses of the section to the members of the General Assembly, or else they would have never ordained that any member might, by his objection, impede the progress of legislation and arrest the signature of the presiding officer to the pending bill on the ground that some unwarranted omission, substitution or insertion had occurred or that some provision of the constitution had been violated. Herein lies, in our opinion, the only constitutional corrective for a failure to observe the provisions of the remaining clauses of the section under discussion and to yield a ready obedience to them.

"If it be said that this construction leaves it optional with the Legislature whether they shall comply with the explicit commands of the other clauses of the section, the obvious reply is that confidence must be reposed somewhere; that the very nature of republican government demands and presupposes it; that if the trust thus reposed is not well founded, that if integrity is not to be found among the legislative representatives of the people, it would be but an

easy matter by a simulated observance of constitutional forms in the registry of falsehoods upon the journals to evade and defeat the most rigid provisions of the organic law that the wit of man is capable to devise.

"As no objection or protest is 'noted on the journal' of either branch of the General Assembly, the only natural and reasonable conclusion for us to reach is that benign conclusion of the law itself, sanctioned by the wisdom of ages, which presumes in favor of right, and not in favor of wrong. Similar presumptions are daily indulged in respecting judicial proceedings, and no reason occurs why a similar liberality of inference should not obtain in regard to legislative proceedings in many instances. Viewing the subject in this light, we regard it unimportant that the journals of the respective Houses do not disclose that strict observance of formality which should properly attend the passage of a bill through its various legislative stages, as, for instance, that the presiding officer suspended all other business and declared that such bill would then be read, and that if no objections were made he would sign the same to the end that it might become a law, nor that the bill was immediately sent to the other House. Counsel for respondent fails to observe that section 37, while requiring these things to be done and these forms to be observed, nowhere requires that they be noted on the journal; the only facts requisite to be noted there, as specified in that section, being that of the signing of the bill and of any protest that may be offered."

State v. Mead, 71 Mo. loc. cit., pp. 271-2.

Mead's case received the unanimous approval of the members of this Court, and was approvingly followed in State ex rel. v. Field, 119 Mo. 593.

Under these rulings it must be held that in the absence of a protest, as already indicated, pointing out in what particulars the constitution has been violated during the passage of the bill, that it will be presumed that the Legislature was not remiss in its duty in that regard, though the journals may have failed affirmatively to record the performance of such duty. This presumption forecloses any investigation as to what occurred during the progress of the bill either as to the occurrence of any substitution, omission or insertion, while on its passage, unless it be the failure to conform to some mandatory requirement of the constitution like that pointed out in Mead's case, when discussing the initial clause of section 37, *supra*, which fails to make entry on the journal of the recital of obedience to such mandatory requirement; but it is obvious that these constitutional provisions which were designed to set forth the formulae incident to the passage of a bill are wholly separate and apart from considerations which go to the constitutionality of a bill, regardless of the strictest conformity to constitutional requirements which may have marked its course from its embryonic stage down to its final passage and approval.

In this case, however, a protest was entered; it is on the point that the act mentioned is invalid, because it is a local and special law, and no notice, etc., was published nor recited in the act, and that, therefore, it violates section 54 of Art. IV of the constitution. If the charge thus made in the protest holds, then the law must be deemed invalid. In support of this theory of the law's invalidity, it is asserted by respondent's counsel that "the Nesbit law is a special act for the reason that it is not uniform in its operation upon a class of cities or communities having 300,000 inhabitants or more, and separates cities not within counties in important particulars from those that are within coun-

ties. Thus, it is enacted, sec. 46, Laws of Mo. 1899, p. 196: 'In all cities not within counties such Election Commissioners, etc., shall be paid by the city, etc., etc.,' The constition primarily makes no such distinction, but requires the Legislature to provide for the registration of voters in all cities and counties of more than 100,000 inhabitants. This is the fundamental class.

The Nesbit act, we think, unconstitutionally provides for registration 'in all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more.'

'When such a law has within its provisions that develop the intent to fasten it on a part of a class only, it will be decided illegal and void, and this is done when a particular city of the class 100,000 inhabitants or more is required to pay a different proportion of liability because of its separation of a county.' State ex rel. v. Herman, 75 Mo. 340; State ex rel. v. Jackson Co. Court, 89 Mo. 237; Murnane v. St. Louis, 123 Mo. 479.

The Nesbit act (section 3) makes provision for the vacation of the offices of Election Commissioners in cities now having 300,000 population. It makes no provision for the vacation of such offices in cities which shall hereafter reach 300,000 population. In this it does not provide for future conditions, but applies solely to present ones; the exact test applied to the notary law by this Court in the Herman case, 75 Mo. 340, on which that law was held unconstitutional because special. The provision is 'said Board of Election Commissioners shall perform all the duties and take the place of the present Board of Election Commissioners of such cities immediately after this act becomes a law. The offices and boards of election Commissioners, as now constituted and existing in such cities to which this act applies, are hereby abolished and the commission of such

Election Commissioners hereby revoked'—that is, no provision is made to extend the act to cities hereafter acquiring 300,000 population."

And section 5 of article VIII of the constitution is quoted, which reads as follows: "The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise."

Under this provision of the constitution it was entirely competent to enact the law now under consideration, because by that section of the organic law power is expressly bestowed on the Legislature and they are commanded to "provide by law for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants;" and the power being granted, all means necessary to its effectuation went with it as incidents, and were part and parcel of the principal grant of power. Ex parte Marmaduke, 91 Mo. loc cit., 262 and cases cit. To the same effect, see Sutherland Stat. Construct., sec. 341; 2 Beach Pub. Corp., sec. 1314; State v. Wilson, 87 Tenn. 697; Moulton v. Reid, 57 Ala. 325; Parker v. Way, 15 N. H. 51; 9 Bac. Ab. 219-20; People v. Eddy, 57 Barb. 593. With such power conferred no limitation was laid upon the Legislature as to the number of population which any given city or county should contain in excess of one hundred thousand inhabitants. This language is too plain for discussion. As to the other words of the constitutional section, they are simply permissive, and their meaning is that the legislature are allowed, if they see fit, to enact similar laws respecting cities having a population exceeding 25,000 and not exceeding 100,000. As to the concluding words of the section, "but not otherwise," they

simply permit legislation for registration in cities where the population exceeds 25,000 and does not exceed 100,000, and in the very section under review the constitution separates and distinguishes cities in counties having more than one hundred thousand inhabitants from those cities having a population of less than one hundred thousand and more than twenty-five thousand inhabitants.

And the Legislature had the right to require cities not within counties to pay for election expenses. If they had not such right, then it would follow that such expenses could not be paid at all, as under the general law such expenses are to be defrayed by the respective counties. Besides, under the statute respecting the construing of laws, it is declared that "whenever the word county" is used, * * * "the same shall be construed to include the City of St. Louis" * * * Sec. 6570, R. S. 1889.

Moreover, in State v. Board of Education, 141 Mo. 49, this Court held that "the Legislature has control over the revenues of the city as over that of a county and State, and can direct by law that the expenses of elections held in a municipality for the election of school directors or for local purposes shall be paid out of the treasury of the municipality from taxes levied and collected by municipal authorities." To the same effect, see State v. Field, 119 Mo. loc. cit. 614; State v. Owsley, 122 Mo. 68.

It is further urged in opposition to the Nesbit law that section 3 of that act "makes provision for the vacation of the offices of Election Commissioners in cities now having 300,000 population; it makes no provision for the vacation of such offices in cities which should hereafter reach 300,000 population. In this it does not provide for future conditions, but applies solely to present ones; the exact test applied to the notary law by this Court in the Herman case, 75 Mo. 340, on which that law was held unconstitutional be-

cause special." There is this answer to this contention: In the first place section 1 of the statute treats of "cities of this State now having or which hereafter may have three hundred thousand inhabitants or more," and the title of the act applies only to such cities. In such circumstances the character of the act is stamped upon it by its first section. It was unnecessary, therefore, to mention or repeat in each or in any succeeding section cities which might thereafter have a population of 300,000 inhabitants or more. The law would imply this, and whatsoever the law will imply is as much part and parcel of a legislative enactment as though in terms inserted therein. State ex rel. Lemon v. Board, 108 Mo. 235; State ex rel. v. Walbridge, 119 Mo. loc cit. 395; Coonce v. Munday, 3 Mo. 374; Han. & St. Joe R. R. Co. v. Marion Co., 36 Mo. 294; Sutherland Stat. Constr., sec. 334.

In the second place, it is insisted that the Nesbit law violates section 7 of article IX of the constitution by the formation of a new class of cities within the first class, and is, therefore, in violation of that section of the constitution just mentioned, which limits the number of such classes to four, and declares that "the power of each class shall be defined by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions," and Murnane's case is cited as supporting this view, which it undoubtedly does.

Answering this objection on a former occasion it was said in the dissenting opinion in Door's case, 145 Mo. loc. cit. 499: "The constitution has made no exceptions to its general grant of power to the Legislature, and the courts, without judicial usurpation, can make none; but it is urged that if you admit the power of the Legislature by general law to amend the charter of the City of St. Louis, you thereby change the classification of the cities of this State as provided

for in section 7 of article IX of the constitution; but it is enough to say of such section that it has nothing whatever to do with the City of St. Louis, since that city is by the constitution singled out and separated from all other cities of this State by express mention by name as well as by peculiar and special provisions shared by no other city. That section has no more to do with the City of St. Louis than has section 16 of the same article, which confessedly has no application to that city, and no more has section 17."

But this theory respecting our constitution fell upon deaf ears and was not regarded as worthy a moment's consideration. Subsequently, however, Stegmiller's case come up for adjudication (52 S. W. loc. cit. 726), whereupon it was said: "Again, we think it is plain that the framers of the constitution *ex vi termini* excluded from this legislative classification the City of St. Louis, which is expressly authorized to adopt its own scheme and charter, and all such cities as it authorized by section 16, art. 9, to frame and adopt their own charters. These cities constitute two constitutional classes distinct from those chartered and classified by the Legislature. It follows that the Legislature may legislate directly for these constitutional cities without infringing the constitution, and in legislating therefor it does not create a new class, but simply provides for a class created by the constitution."

With this interpretation of the constitution the members of this Court then present en banc agreed, but no mention was made of Murnane's case, nor that it was overruled or in any manner questioned, nor of the fact that the dissenting opinion aforesaid had first advanced the same theory as that finally adopted in Stegmiller's case, *supra*.

Afterwards Segmiller's case was followed in State ex rel. Hawes v. Mason (not yet reported) in banc where it was said: "So much of the argument indulged in to demon-

strate that the act under consideration is a special and not a general law is inapplicable to legislation of this character. St Louis is organized directly under the constitution. It is not in either of the four classes which have been defined by the Legislature under the constitution. It would have been entirely appropriate for the Legislature to have designated St. Louis by name instead of referring to it as a city of over three hundred thousand inhabitants," and in this opinion all the members of this Court then present incontinently concurred; but the case in 123 Mo. 479 was passed *sub silento*, without as much as a nod of recognition.

Under these rulings, Murnane's case, insofar as concerns the classification idea as applied to the City of St. Louis, must be regarded as no longer authoritive.

Passing now to other sections of article IV of the constitution said to have been violated in the passage of the Nesbit law, we look at section 25, which provides that "No law shall be passed except by bill, and no bill shall be so amended in its passage through either house as to change its original purpose." This purpose means the general purpose of the bill, not the mere details through which and by which that purpose is manifested and effectuated. Were this otherwise it is easy to see that the process of legislation would be seriously hampered and embarrassed by every amendment which might be offered, however germane it might be to the idea as formulated in the first draft of the bill. In addition to that, section 25 must be considered in connection with section 37 aforesaid, and inasmuch as no protest was offered, based on the prohibition of section 25 in relation to substitution, omission or insertion, which are but other forms of amendment, it must needs follow that in contemplation of law no unwarranted substitution, etc., occurred pending the passage of the bill.

The Nesbit law is also assailed on the ground of violat-

ing section 31, which declares "No bill shall become a law, unless, on its final passage, the vote to be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal and a majority of the members elected to each house be recorded thereon as voting in its favor." In Mead's case, *supra*, this section was held to be mandatory. Looking into the evidence offered by respondent, his Exhibit "D," at page 1106, containing the entries of the journal of the House of Representatives of Thursday, April 20, 1899, shows that House bill No. 760, which is the bill in question, was, on motion of Mr. Nesbit, taken up for third reading and passage. The bill was read a third time and then passed by a vote of 75 members, with 53 voting in opposition thereto, 3 members absent, 4 members absent with leave and 4 members reported sick. We will take judicial notice that the House of Representatives is composed—140 members. This being the case, it is obvious that House bill No. 760, the name by which the bill was known and identified, received the requisite constitutional majority.

Respondent's Exhibit "C," showing the entries of the journal of the Senate affecting the passage of the bill through the Senate, shows that on Saturday, May 20, 1899, House bill No. 760 was placed on third reading and passage. The roll was called and the bill passed by 22 members voting in favor thereof and 10 members voting against it. Judicial notice is also taken of the fact that the Senate consists of 34 members, and that consequently the bill carried by the requisite majority.

The exhibits offered in evidence by respondent also shows that section 37 was complied with in both Houses as to the signing of the bill. The mandatory provisions of section 54 of art. IV having been complied with, it is wholly immaterial under former rulings, so far as concerns the

validity of the law, whether House bill 760 went through the precise course prescribed by other sections of that article of the constitution or not, as those sections are non-mandatory, and among that number is section 38 in regard to the presentation of the bill to the Governor by the clerk, and the failure of the latter to note the fact on the journal. The presumption is in favor of the proper presentation of the bill and of its timely signature. State v. Mead, *supra*. The same presumption holds as to all the other non-mandatory sections pleaded in respondent's return.

As to sufficiency of the title of the act, this is affirmed by Mead's case, *supra*; State v. Blackstone, 115 Mo. 427; St. Louis v. Weitzel, 130 Mo. 600; State v. Slover, 134 Mo. 10; State v. Bockstruck, 136 Mo. 335.

Respondent also asserts that House bill 760 violates the following clauses of section 53 of art. IV of the constitution: Because it is a local or special law, 2, regulating the affairs of counties, cities, etc.; 11, for the opening and conducting of elections, or fixing or changing the places of voting; 14, creating officers, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts; 32, forbidding the passage of a local or special law where a general law can be made applicable and making it a judicial question, etc. All of these objections are answered by the adjudications in Kansas City v. Stegmiller and Hawes v. Mason, *supra*, that St. Louis stands alone, and that a law designating that city by name would be valid and a general law. State v. Miller, 140 Mo. 439. The law is general for the further reason that it makes provision for the future, not only for cities now having a population of 300,000 or more, but for such cities which in the future may attain a like population.

Further objections are made to the law on the ground that it is in opposition to sections 2, 5, 8, 10 and 12 of article VIII of the constitution, as follows:

"Section 2. Every male citizen of the United States and every male person of foreign birth, who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of 21 years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First, he shall have resided in the State one year immediately preceding the election at which he offers to vote. Second, he shall have resided in the county, city or town where he shall offer to vote at least 60 days immediately preceding the election.

"Section 5. The General Assembly shall provide by law for the registration of all voters in cities and counties having a population of more than 100,000 inhabitants, and may provide for such registration in cities having a population exceeding 25,000 inhabitants and not exceeding 100,000, but not otherwise.

"Section 8. No person while kept at any poor-house or asylum at public expense, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this State.

"Section 10. The General Assembly may enact laws excluding from the right of voting all persons convicted of felony or other infamous crime or misdemeanors connected with the exercise of the right of suffrage.

"Section 12 No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States and who shall not have resided in this State one year next preceding his election or appointment."

Section 5 of that article has already received sufficient discussion showing its mandatory nature; that it confers full power on the Legislature to require the municipality to pay the cost of elections held therein, and that such legislation is not special, but general in its nature, and not at

war with the classification theory; and it may be further said that the act under review does not at all militate against the constitutional right of any citizen otherwise eligible to vote. Registration laws grow more in favor as the years go by as tending to prevent fraud and thereby preserve the purity of the ballot box. On this topic Judge Cooley observes:

"The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the Legislature, unless forbidden. Many resting on the same principles are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls and there deposit their ballots, and not elsewhere, was a violation of the constitution because prescribing an additional qualification, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem to the Legislature important to the preservation of order in elections to guard against fraud, undue influence and oppression, and to preserve the purity of the ballot box, are not only within the constitutional power of the Legislature, but are commendable, and at least some of them absolutely essential." Const. Lim. (6th Ed.), 757-8.

Of the law in question it is said by respondent that it "deprives the citizens of the United States residing in the City of St. Louis of their right to the equal protection of the laws and imposes on citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office, and is null and void." This assertion is amply

answered by the quotation already made from an eminent author and jurist, and it may be further answered in this way: Section 11 of the controverted act, insofar as it prescribes the preliminary qualifications as to residence in order to entitle a citizen to vote, is the following:

"Sec. 11. Every male citizen of the United States, and every (male) person of foreign birth, who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the State one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, * * * shall be entitled to vote at such election, for all officers, State or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident."

This section is just the same as section 20 of what is known as the "Filley act," approved May 31, 1895, laws of that year, extra session, p. 5, and, with the exception of the bracketed word in section 11, the law was the same in 1889. Rev. Stats. that year, sec. 988.

The law of Ohio is substantially the same on this point as our own statute as to unmarried men, except that it requires a voter to have been resident of the county for 30 days and resident of the township, village, or ward of a city or village for 20 days next preceding the election. As to a voter who is the head of a family, greater privileges are accorded; *bona fide* removals from one ward of the city,

etc., to another ward or to another township or village in the same county, and *vice versa*, are permitted. 1 Bates Annot. Stats. Ohio, sec. 2945.

In Kentucky the statute is in the language of the constitution of that state, and requires a residence in the state for one year, in the county six months, and in the precinct 60 days. Kentucky Stats. 1894, sec. 1439.

In Illinois the language of the statute following that of the state constitution requires a residence in the state for one year, in the county 90 days, and in the election district 30 days. 2 Starr & Curtis Annot. Stats. Ill., 1652, sec. 66.

In Massachusetts the constitutional and statutory requisites as to the time of residence prior to voting are one year in the state and six months in the town or district, thus differing from similar regulations in Kentucky only in the fact that in the latter 60 days' residence is required in the precinct, so that it will be noted that the preliminary requirements as to the right to vote in this state are not more stringent at least as to single men who offer to vote than those in the state of Ohio.

But whether they were or not does not signify, since, as remarked by an author on the subject under discussion, "the power to provide for the orderly exercise of the right of suffrage, which we have seen belongs to the State Legislature, includes the power to enact registry laws and to prohibit from voting persons not registered. It is now generally admitted that these laws do not add to the constitutional qualifications of voters and are, therefore, not invalid." McCrary on Elections (4th Ed.), sec. 127.

In Illinois where the act required registration to be complete by the third Tuesday before the election, it was held constitutional, the Court remarking: "If it be admitted

that the Legislature can require a voter to establish his qualifications before election it is difficult to see why, upon principle or as a question of power, it cannot require such proof to be made as well three weeks before the day of voting as ten days, or five days, or even one day prior thereto. The real question involved in the objection is whether any man can be prevented from voting who proves or offers to prove on the day on which he seeks to cast his ballot that he is a legal voter. If cases can be supposed where the 'three-weeks' requirement will deprive qualified electors of the privilege of depositing their votes, cases can also be supposed where one day's requirement will work the same result. This mode of reasoning, carried out to its logical sequence, will make any kind of a registry law unconstitutional. For it would be a physical impossibility for the judges of election to receive the votes and make up the registry at the same time and on the same day." People v. Hoffman, 116 Ill. 587.

The constitution of that state requires "all elections shall be free and equal," and yet in that case it was ruled that this declaration 'does not necessarily mean that there must be uniformity of regulation in regard thereto in all portions of the state. Certain regulations may be prescribed for the conduct of elections in cities and villages, though they may have no application to the country places."

It will be found upon examination that the great current of authority flows in the direction of holding it entirely competent for the Legislature to regulate registration and the conduct of elections in the manner above indicated, the origin of these rulings being Capen v. Foster, 12 Pick. 587; see also State v. Butts, 431 Kas. 537; Weil v. Calhoun, 25 Fed. 865; *In re* Polling Lists, 13 R. I. 729; Patterson v. Barlow, 60 Pa. St. 54; Myers v. Moffet, 2 Bart. Elec. Cas. 564.

And in relation to voters in St. Louis being denied "the equal protection of the laws" by the controverted statute, this charge may be answered and refuted by the language of Mr. Justice Bradley in Missouri v. Lewis, 101 U. S. loc. cit. 31: "We might go still further and say, with undoubted truth, that there is nothing in the constitution to prevent any state from adopting any system of laws or judicature it sees fit for all or any part of its territory. If the state of New York, for example, should see fit to adopt the civil law and its methods of procedure for New York City and the surrounding counties and the common law and its method of procedure for the rest of the state, there is nothing in the constitution of the United States to prevent its doing so. This would not of itself, within the meaning of the fourteenth amendment, be a denial to any person of the equal protection of the laws. If every person residing or being in either portion of the state should be accorded the equal protection of the laws prevailing there, he could not justly complain of a violation of the clause referred to, for, as before said, it has respect to persons and classes of persons. It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

In concluding this portion of the opinion it may be well enough to say that in their general features most of the election laws of our neighboring states, as well as of our own, appear to be in their general features and design the same, to wit, that of preventing fraud and of making it more difficult to defeat the will of the people as recorded or as intended to be recorded at the polls.

In Ohio, for instance, the secretary of state is *ex officio* "State supervisor of elections," and he appoints 4 deputy

supervisors in each county in the State of different political parties, and they, in counties where no registration is done, appoint judges and clerks of each political party for service at elections. In cities of the first and second classes a board of elections is appointed by the mayor, and they shall be equally of the leading political parties, and they appoint registrars, judges and clerks of each of the two leading political parties to attend at elections in such cities.

In Illinois, the "Board of Election Commissioners" is appointed by the county court. They serve in every city, village and incorporated town. Such commissioners must be three in number, two of them of the leading political parties. Such commissioners select three electors, who are to act as election judges for each precinct, and the two leading political parties are to have one judge each and one of the clerks, and these number vary as to judges and clerks as to the leading political party represented by a minority of all the commissioners. The Board of Election Commissioners appoint a chief clerk and have other clerical assistants.

In this State, under the act in question, the governor appoints a "board of election commissioners," three in number. This is done by and with the advice and consent of the Senate. One of these commissioners is required to be of the opposite political party to which the governor belongs. Such commissioners are required to give bond, with security, in the sum of $10,000, for the faithful performance of their duties. These commissioners appoint and commission one deputy election commissioner, who is to be the secretary of the board, and he may employ other clerical assistants, if necessary. These commissioners select and choose four electors as judges of election for each precinct and two clerks, and "two of said judges and one of said clerks of election shall

belong to and be members of the party of opposite politics to the other two judges and clerks."

In Kentucky, under what is commonly called the "Gobel Law," the General Assembly elects "the State Board of Election Commissioners." This board appoints a secretary. This board appoints for each county in the commonwealth, styled the "county board of election commissioners." This county board appoints for each election precinct "two judges, one clerk, and one sheriff of election," and they "shall be so selected and appointed as that one of the judges at each place of voting shall be of one political party and the other of a different party, and there shall be the like difference at each voting place between the sheriff and clerk of election." This summary of the election laws of three states, besides our own, does not disclose any very marked differences between these laws in general outline and operation. If honestly and faithfully administered the result will be in accordance with such proper administration. If otherwise administered the result will be such as might attend the operation of the most carefully drafted law; but certainly it would seem that an even division of the judges and clerks in political opinion at each election precinct that a considerable safeguard is thrown around the purity of the ballots at the polls and the prevention of fraudulent returns being made.

Respondent further contends that inasmuch as the Nesbit law professedly repeals the act entitled, "An act to create a board of election commissioners," approved May 31, 1895, and this act is approved June 19, 1899, and what is known as the Cardwell act in relation to cities having over one hundred thousand inhabitants, which purports to amend said act of 1895, and was approved also on June 19, 1899, that therefore the repeal of the act aforesaid was not

accomplished. In reference to this it is enough to say that the Cardwell act is not before us for adjudication; that so far as concerns the Nesbit act, it does repeal the act of 1895. Whether it be possible to amend an act and make it a valid law taking effect on the day its appeal is accomplished by another act is not involved in the issues now before us, and any utterance we might make on the subject would be wholly *obiter*. We shall therefore decline to consider or rule the point.

Finally, Section 46 of the Nesbit Law, as already stated, gives full authority (even if it would not be granted by necessary and inevitable implication, as aforesaid) to compel the city to pay the expenses incurred by the election commissioners, and ordinance 19835, known as "Relators' Exhibit 2," shows the sum of $75,849.25 was appropriated by the municipal assembly for "election and registration" purposes. This being the case, Section 46, *supra*, takes hold of the appropriation thus made and will disburse it as occasion may require.

The premises considered we award the peremptory writ.

All concur—Burgess and Marshall, JJ., in toto; Gantt, C. J. and Brace and Valiant, JJ., in all except the remarks about the Murnane case.

T. A. SHERWOOD, J.

## SEPARATE CONCURRING OPINION.

Chief Justice Gantt and Judges Brace and Valliant rendered a separate opinion, which is as follows:

We concur in the opinion, save and except so much thereof as declares the Murname case overruled.

In our opinion the constitution commands the General Assembly to provide a system of registration of voters in all cities having a population of more than one hundred thousand inhabitants, and there is no provision of the organic law requiring the General Assembly to classify cities for that purpose, as there is in providing charters for the various classes of cities, and hence we respectfully submit that the discussion of section 7 of article IX of the constitution in this case is not relevant.

We have no doubt whatever that it is entirely competent for the Legislature in its wisdom by general laws to provide one system for cities having over one hundred thousand inhabitants and less then three hundred thousand, and other regulations for cities having three hundred thousand inhabitants and over.

The people by the constitution conferred the legislative power upon the General Assembly, subject to the limitations therein contained, and there is no such limitation as that claimed by respondent.

The classification theory has nothing to do with the case, and the act in this respect violates no articles of the constitution.

The power to regulate elections is a governmental function and the City of St. Louis is just as much subject to the laws of the State in this regard as any other county or city of the state.

The Murnane case involved a change of the character

of the City of St. Louis in respect to a municipal function. The discussion of that case, in our opinion, is, therefore, *obiter*.

With this exception we fully agree in the very able opinion of our learned brother.

## STATUTE OF MISSOURI CREATING BOARD OF ELECTION COMMISSIONERS IN CITIES OF 300,000 INHABITANTS OR MORE.

The act of the legislature of Missouri creating the Board of Election Commissioners, out of which their proceedings grew, is as follows:

H. B. 760.

ELECTIONS: In cities of three hundred thousand inhabitants or more.

AN ACT to provide for the registration of voters in cities now having or which hereafter may have three hundred thousand inhabitants or more; to provide for the creation of a Board of Election Commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith.

Section 1. In all cities of this State now having or which hereafter may have three hundred thousand inhabitants or more there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this State, so far as the same are not inconsistent or in conflict herewith.

Sec. 2. Within thirty days after this act becomes a law, the Governor, by and with the advice and consent of the Senate, shall appoint for each of such cities a Board of Election Commissioners, to be composed of three (3) members,

who shall hold their office for the term of four years, and until their successors are commissioned and qualified. One of said Commissioners shall be a member of and belong to the leading party politically opposed to that to which the Governor belongs. In making the appointment of Commissioners, the Governor shall designate the Commissioner who shall be chairman of the Board of Election Commissioners of such city. In case of vacancy for any cause in said Board, the same shall be filled by the Governor for the unexpired term until the assemblying of the next Legislature, when the name of said Commissioner shall be submitted to the Senate by the Governor for confirmation, as those of the other Commissioners when appointed. Such Commissioners shall be legal voters, residents of the State for at least five years and of such city for a like term and be of approved integrity and capacity; they shall hold no other office, and shall be ineligible to any elective or appointive office during their term of office, and shall, before entering upon the duties of their said office take and subscribe an oath to support the constitution of the United States and of this State, and to demean themselves faithfully in office, and each to give bond to the State in the sum of ten thousand dollars with securities to be approved by the Governor, conditioned for the faithful and honest performance of the duties of his said office, and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the Secretary of State. Said Election Commissioners shall make all necessary rules and regulations, not inconsistent with this act, with reference to the registration of voters and conduct of elections; and shall have charge of and make provisions for all elections, general, special, local, municipal, State and county and of all others of every description, to be held in such city or in any part thereof, at any time.

Sec. 3. Such Election Commissioners shall appoint and

commission one Deputy Election Commissioner who shall hold his office during the pleasure of said Commissioners, and shall be vested with all the powers and duties of the Commissioners during their absence, sickness or inability to perform their duties; said Deputy Election Commissioner shall also be the secretary of the Board of Election Commissioners. Such Commissioners shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said Deputy Election Commissioner and employes shall be subject to the same restrictions and take and subscribe like oaths as said Commissioners, and file the same in the office of the Commissioners. Said Election Commissioners, Deputy Election Commissioner and judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their several offices, and in the affairs and business thereof. Said Board of Election Commissioners shall perform all the dutes and take the place of the present Board of Election Commissioners of such cities, immediately after this act becomes a law. The offices and Boards of Election Commissioners as now constituted and existing in such cities to which this act applies are hereby abolished, and the commissions of such Election Commissioners hereby revoked, and all acts and parts of acts inconsistent with this act, in so far as they apply to the cities named herein, are hereby repealed.

Sec. 4. The office of such Board of Election Commissioners shall be in the city hall of such city, and shall be kept open for the transaction of the duties and business of said office during business hours. Immediately after the appointment of said Commissioners and upon the opening of such office, the officers or other custodians of said property shall, upon demand by said Commissioners, turn over

to them all books of registration, poll books, tally-sheets, ballot boxes, form blanks, stationery and property of every description in their hands in any way relating to registration and elections, or connected therewith, in any manner. Said Election Commissioners shall purchase and provide all necessary ballot boxes, and all books of registration, poll books, tally-sheets, ballots, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith; and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof.

Sec. 5. Said Election Commissioners and Deputy Election Commissioner shall have the power and are hereby authorized to register any person or persons in said office of Election Commissioners, and re-register or transfer any person or persons, who may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except such days as intervene between the completion of the registration herein provided and the next following election; a change of residence from one place in a precinct to another place or part thereof, shall not necessitate a re-registration or transfer, or deprive the registered voter of his right to vote in said precinct. Such registration of voters shall be done in the same form and manner and in the same books as provided for the registration of voters in the precincts by the judges of election sitting as a board of registration in such precincts.

Sec. 6. It is hereby made the duty of such Board of

Election Commissioners for such cities within six months after taking effect of this act, to divide such cities into election precincts regarding ward lines and composed of compact and contiguous territory, which shall contain as nearly as practicable, four hundred actual voters; and in making such division and establishing such precincts, such Commissioner shall take as a basis the poll books of the number of votes cast at the last preceding Presidential election. At least six months before each subsequent Presidential election the Election Commissioners may revise and re-arrange the precincts and increase or decrease their number on the basis of the votes cast at the previous Presidential election for President making such precincts to contain, as near as practicable, four hundred voters, measured by the vote of such election. The precincts in each ward shall be numbered consecutively.

Sec. 7. After the said Commissioners are appointed and qualified, they shall prepare for a new and general registration of voters for the next city election or State election, as the case may be, such registration shall be continued and revised as herein provided.

Sec. 8. Such Board of Election Commissioners shall, at least sixty days prior to the first city or State election after this act becomes a law, select and choose four electors as judges of election for each precinct in such city; they must be citizens of the United States, and entitled to vote in such precinct at the next election, must be men of good repute and character, be of good understanding and capable, they must reside in the ward in which the precinct for which they are selected to act is situated, and not hold any office or employment under the United States, the State of Missouri or the city in which such election is held, and not be candidates for any office at the next ensuing election; two clerks of election for each precinct shall also be selected within the same time by such Commissioners, who shall

possess the same qualifications as the judges aforesaid. Before entering upon the duties of their offices, each judge and clerk, so appointed, shall take an subscribe to like oath as that taken and subscribed by the Election Commissioners, and file the same in the office of Election Commissioners. Said judges and clerks shall be appointed for a term ending thirty days prior to the next State election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal elections in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said Commissioners shall make an appointment as herein provided to fill such vacancy. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks.

Sec. 9. Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general State election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day of registration, Tuesday, three weeks before such election. A new general registration shall be made in every year thereafter in which a Presidential election occurs, and just prior thereto the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be provided and furnished to each board of registration by the said Election Commissioners for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the

residence of such person shall appear in the first column. The register shall be ruled, and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor above that as the second or such other floor as it may be. Under the column "name," the name of the applicant, writing the surname first, and given or christian name after in full. Under the column "nativity," the state, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence," the periods, by days, months or years, stated by the applicant in precinct, city and state. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention" the word "yes." Under the column "qualified voter," the word "yes," or "no," as the fact shall appear or be determined by the board of registry, it being however, required of them to designate as a qualified voter any male person who, if otherwise quali-

fied, shall not, at the time of making application be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application" the month, day and year when the applicant presented himself and was adjudged a qualified voter in the election precinct. Under the column "signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is written for him.

Sec. 10. The judges of election aforesaid shall consitute the board of registry in the precinct for which they are appointed. In the registration of voters, said board of registry shall proceed as follows: They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this state; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry books and shall make the entries therein required by this act, and one of the judges shall ask the question as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said books. The name of every applicant shall be entered in such registry books, and

all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same column, "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although otherwise qualified. At the end of the day's registration, each of said judges shall sign his name at the end of the list on each page of the registration book. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election, shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judge or clerk as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds.

Sec. 11. Every male citizen of the United States, and every male person of foreign birth who may have declared

his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the state one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor an officer, soldier or marine in the regular army or navy of the United States, nor while kept at any poorhouse or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, state or municipal, made elective by the people, or at other elections held in pursuance of the laws of the State, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident.

Sec. 12. The election commissioners shall prepare and furnish to the board of registration in each precinct two blank books to be known as "verification lists," each page to be ruled into columns, and contain pages sufficient for each street, avenue and alley in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand pages of such "verification lists," arranging them according to the street, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the reg-

istered names to the pages of such "verification lists," headed and "registered names," according to the street number as above indicated. If during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon such registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists," such board, or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists. Said board of registration shall, before eight o'clock on the following day, return said "verification lists," to the office of such election commissioners.

Sec. 13. The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists," does not reside at the place designated thereby, they shall make a check mark opposite such name. If, in making any such canvass, any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor, and be liable to a penalty not to exceed $50. In making such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons

so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy shall be returned to the election commissioners. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock on either of said days, the election commission shall immediately appoint a clerk, of the same politics, in place of the one absent or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by imprisonment for not less than one month nor more than one year.

Sec. 14. Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check-mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioners. A similar notice shall also be served by one of said canvassers, either at the time said canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he be not found at the place

designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than ten o'clock Friday morning of the week of such canvass. Any wilful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor, punishable by imprisonment not less than one month nor more than one year. And it shall be the duty of said commissioners, when complaint is made to them, to investigate the action of such clerks or canvassers, and to cause them to be punished for such neglect of duty.

Sec. 15. On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the

board of registration during that session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after, such examination and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes," under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall not appear and show cause why his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registration to the office of the election commissioners. If any person, already registered, shall appear before said board at such session and make oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase

his name, but shall make the correction to his residence in the books of registration.

Sec. 16. Any voter or voters in the ward containing such precinct may make application in writing before said board of registration at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application, the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application, the board of registration conclude to erase the name they shall so note it on the register. Such person may appear before the Board of Election Commissioners for the purpose of re-instating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward.

Sec. 17. At the end of the last session provided for, the said Board of Registration and said clerk shall compare and correct the registers aforesaid, and make them correspond and agree; and said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioners; thereupon the said commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address and arranged according to the streets, avenues, or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands, and upon application, a copy of the same shall be given to any person in such precinct. Said registers in the office of the

election commissioners, shall be public records and open to public inspection.

Sec. 18. Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration shall appear in person and make application under oath, as in the case of the first registration herein provided. The same form and blanks and method of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the election commissioners in every subsequent registration, as is directed herein for the first registration and election following the same. If any special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry.

Sec. 19. At every election held in such cities between the general registrations above referred to, the last general registry shall be used, and for that purpose the Board of Registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m. until 10 o'clock p. m., on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this act becomes a law and the next general registration provided for herein, the registry books of qualified voters in such cities at the last general city or state election, and used in said election as the registry of qualified voters of such cities, and the registry of qualified voters under section 5

of this act, together with the registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 9 of this act by said election commissioners for the registration required to be made in every presidential year by this act; and the registry and other books no longer required, or used, shall be kept and preserved in the office of the election commissioners.

Sec. 20. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application in writing and file the same with the election commissioners, to be heard and considered by the Board of Appeals, as in other cases provided.

Sec. 21. Said elections commissioners shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a Board of Appeals, to hear such application and appeals as shall be made to be placed upon the registry of voters of any particular precinct of persons who applied for registration and were refused by the Board of Registration, or had their names stricken from the registry by said board. Said Board of Appeals may also register as qualified voters, such persons as may make application, who failed to appear before the Board of Registration because of sickness, forgetfulness, absence from the city or other reasonable cause at the time of precinct registration.

Sec. 22. It shall be the duty of such election commissioners to give ten days' notice in two daily newspapers of

such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot box, poll books, verification lists, and necessary blanks and stationery, packages of ballots and key to box, to one of said judges of election, at his residence in such precinct.

Sec. 23. The election polls shall be open at 6 o'clock in the morning, and continue open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof. If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall administer to such judge or clerk the oath required of the judge or clerk originally appointed, and such appointee perform like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall wilfully detain any register or poll book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be imprisoned not less than three months nor more than one year, or fined not less than $200 nor more than $1,000.

Sec. 24. Before voting begins the ballot box shall be empty, and it shall be opened and shown to those present

to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by a judge that he protested against such obstruction of the view of the ballot-box, and was overruled by the majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct.

Sec. 25. Each of the clerks of the election shall keep a poll book which contains a column headed "number," another headed "residence," and another headed "names of voters." The name and street and number of the residence of such voter shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number."

Sec. 26. One of the said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll book, in the column headed "number," and another judge shall put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, mark "voted," or the letter "V." If such person so regis-

tered shall be challenged or disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause of challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter.

Sec. 27. Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the order of such judges of election. At every registration and election, each of the political parties shall have a right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth as will enable him to see each person as he offers to register or vote, and who shall be protected, in the discharge of his duty by the judges of election. Two persons of each political party, represented on the ballot, of good character and standing may be admitted, by the judges, into the polling place to be present during the canvass of the votes and the making of the returns.

Sec. 28. As soon as the polls of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the votes. Such canvass shall not be adjourned or postponed until it shall be fully com-

pleted, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at such entrance to the room where such canvass is begun or about to take place, to exclude noisy or disorderly persons, and to keep the peace.

Sec. 29. The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll-books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll list do not agree after such rejection, they shall reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioners; and the ballots or poll lists agreeing or being made to agree in this way, the board shall proceed to count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are on, or supposed to be alike, and exclude from such files any which may have a name or an erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same name and count them by the tens carefully examining each name of each of said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner and call the names of the persons named in the ten ballots, and the offices for which they are designated, and the poll clerk shall tally ten votes for each of such persons. When they shall have gone through such file of ballots containing the

same name by tens in that way, and when the clerks shall have tallied all the votes by tens for each of said persons, they shall then take up the next pile of ballots containing the same names, and shall count them by tens in the same way, and shall call the names of the persons named in the said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed, and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kinds of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the persons proper to be voted for on such ballots has been omitted or erased, usually called "scratch tickets." They shall be canvassed separately by the judges, and each name called out to the clerks and the office for which it is designated, and the clerks making tally of the same. When all ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the number, one of them shall announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name.

Sec. 30. Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of the candidates for an office, the names together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all

the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks who shall talley the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the talley sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such talley sheets and returns the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition, and certify the same to the election commissioners, as provided herein in other cases.

Sec. 31. The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll books used at such election. Each of these statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, and city in relation to which such statement shall be made, and the time of opening and closing of the polls in such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall

be written or partly written and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor in writing, and a copy thereof signed by himself shall be enclosed in an envelope which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened. And the envelope shall be directed on the outside to the election commissioners. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envelope, securely sealed and signed and directed on the outside of envelope to said election commissioners. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward.

Sec. 32. The poll-books which contain the statement of returns shall be placed in the ballot-box, and the ballot-box shall then be locked and the key removed; whereupon, said judges of election shall all write their names upon a slip of paper of sufficient length for the following purposes: Said slip of paper, after the signing of their names thereon by the judges, shall then be pasted over the key hole of the said box and extending upward to the upper lide of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such

paper and destroy the signatures written thereon, and when the key shall be inserted in the key hole it will tear the paper so pasted over the key hole. Such paper shall be fastened with some adhesive material and so as not to permit the removal of such slip of paper without defacing it.

Sec. 33. The judges shall fold in two folds and string closely upon a string or wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed, in writing or print, the number of the precinct, date on which such election was held and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective" or "objected" or "rejected," in such sealed package or envelope to the election commissioners. Two of said judges of opposite politics shall immediately after signing the statement of the result of the canvass and talley sheets and the sealing of the ballot-box, go to the office of the election commissioners and deliver said ballot-box and the key thereto to said election commissioners, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-boxes, said commissioners shall give a receipt therefor to said judges, and shall place them properly arranged in the order of precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioners shall securely keep said ballot-boxes for twelve months, not opening or inspecting them nor allowing any one else to do so, except upon order of Court in case of contested election, or when it shall be necessary to produce them at the trial of an offense committed under this act. At the end of twelve months after said election, said ballots shall be destroyed:

Provided, that if any contest of the election of any officer voted for at such election, or prosecution under this act shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined.

Sec. 34. Another judge shall take a statement of the votes cast into his possession sealed up in an envelope as aforesaid, and one of the clerks shall take a tally sheet, sealed up in an envelope as aforesaid, and the judge having possession of statement and the clerk having possession of this sheet, shall each, before twelve o'clock of the next day after such election, deliver the statement and tally sheet to the said election commissioners, and take a receipt from them therefor. And it shall be the duty of the said election commissioners to receive the same, and to keep safely under lock and key until ordered to be surrendered as herein provided.

Sec. 35. The said election commissioners upon the receipt of said ballot-box and key thereto shall note the condition of seal or stamp on said box and enter the facts touching the same upon a book kept by them, together with the name of the judges who returns such ballot-box; he shall thereupon open said ballot-box and remove the poll books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerks taking ballots, ballot-boxes, statement, tally or poll-books, to be delivered to the election commissioners, shall fail to deliver the same to said election commissioners within three hours after the close of the canvass of the vote as aforesaid, or shall fail or refuse to comply with the provisions of this act, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $25 nor more

than $500, or imprisonment not more than six months, or by both such fine and imprisonment.

Sec. 36. Within eight days after close of such election such Board of Election Commissioners, shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for governor and lieutenant governor on one sheet; all votes for other state officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the Supreme Court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of congress and for senators and representatives to the general assembly on another sheet; all votes for county officers on another sheet; all votes for city officers on another sheet; all votes for any other officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitted to a vote of the people on another sheet. It shall be the duty of such Board to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or results, and a certified copy thereof, shall be treated everywhere within the state, and by all public officers, with the same force and effect as the abstract of votes now authorized by the laws of the State in such cases made and provided.

Sec. 37. The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application.

Sec. 38. If, upon opening the various returns so made, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges

and clerks of any fraud in any respect touching such returns, it shall then be the duty of the Board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the Board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to call such parties who were present at the time of such proclamation to come before them, and a subpoena may be issued by the election commissioners compelling any such witness to come before such Board and give their evidence touching the matter; and it shall be the duty of said Board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judges of election after the canvass by them in such precinct, the result, so declared, shall be binding and conclusive, except in case of election contests.

Sec. 39. Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts; or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or strick-

en from any registry of voters of such precinct, made in pursuance of this act, or otherwise as in this act provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious name, or any name of any person, except as provided in this act, upon conviction, shall be adjudged guilty of felony and punished in the penitentiary not less than two years.

Sec. 40. Any person who shall falsely personate an elector, or other person, and vote, or attempt or offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, wilfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having voted once, shall vote, or attempt to vote again; or shall knowingly, wilfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by any such means induce, or attempt to induce, any such voter to exercise any such right,

shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years.

Sec. 41. Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such election, or any false certificate or statement of the result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of felony, and be punished by imprisonment in the penitentiary not less than two years.

Sec. 42. If any person other than a judge of election, shall at any such election knowingly or wilfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes; or if any judge of election shall knowingly and wilfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, wilfully or fraudulently put any ballot or other paper having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry, as herein provided, or who shall be entitled to vote under this act; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; or shall remove

any ballot or semblance thereof from, or add any ballot or semblance thereof to the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed. Every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years.

Sec. 43. If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or hindered; or whereby the lawful proceedings of any judge of election, or Board of Registration, or clerk or other officer of such election or challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment not less than thirty days nor more than one year.

Sec. 44. It shall be unlawful for any judge of election, clerk or person designated as provided in this act, or any person or persons within the polling place to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment not less than ten or more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars.

Sec. 45. It shall be the duty of such election commissioners to aid in the prosecution of all crimes and offenses against this act, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any law of the state concerning registration and election, and when, in the judgment of such election commissioners such offense has prob-

ably been committed, it shall be their duty to cause a prosecution to be instituted against such person.

Sec. 46. In all cities not within counties such election commissioners, deputy election commissioners, judges and clerks of election and registration and clerks and assistants employed by the Board of Election Commissioners shall be paid by the city. The members of said Boards of Election Commissioners shall each receive a salary of $2,500 a year, and deputy election commissioner a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the election commissioners shall each receive a salary of $4.00 per day for the time actually employed, payable monthly. All office and other expenses incurred by said Board of Election Commissioners, and all office and other expenses and all costs and expenses of registration and election in such cities shall be paid out of the city treasury. All printing, binding, books, stationery, etc., shall be paid for in the same manner and contracted for by the Board of Election Commissioners.

Sec. 47. The act of a majority of such Board of Election Commissioners shall in all cases arising under this act be considered as the act of said Board of Election Commissioners.

Sec. 48. Said Board of Election Commissioners shall audit all the claims of the judges of election and of registration and all other claims, expenses and accounts under this act, and shall draw a warrant therefor upon the proper officer.

Sec. 49. All acts and parts of acts inconsistent or in conflict with this act are hereby repealed, and the act entitled, "An act to create a Board of Election Commissioners," etc., approved May 31, 1895, is hereby repealed.

Originated in the House.

W. J. WARD,
Speaker House of Representatives.

H. A. NEWMAN, Chief Clerk House of Representatives.

A. H. BOLTE,

President of the Senate.

CORNELIUS ROACH, Secretary of the Senate.

I hereby certify that I have carefully compared the foregoing bill with the engrossed copy of the original thereof, together with House amendment to title, and find the same to be truly enrolled.

MATTHEW COFFEY,

Chairman Committee on Enrolled Bills.

Approved June 19, 1899.

LON V. STEPHENS, Governor.

The assignments of error, filed by plaintiff in error, Isaac M. Mason, City Auditor of the City of St. Louis, and which are urged by him as causes for a reversal of the judgment, are as follows:

## ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL.

Now comes Isaac M. Mason, plaintiff in error in the above entitled cause, and prays the Court to reverse the judgment rendered by the honorable the Supreme Court of the State of Missouri in the cause lately pending in said last-named Court, wherein The State of Missouri, ex rel. James McCafferey, Lawrence D. Kingsland and George J. Kobush, were relators, and the said plaintiff in error, Isaac M. Mason, Auditor of the City of St. Louis, Missouri, was respondent, on account of the many and manifest errors committed by said Court to the prejudice of the plaintiff in error, as will appear by an inspection of the record thereof, and especially for the following reasons, which are hereby set out as the

## ASSIGNMENT OF ERRORS:

### I.

The act of the General Assembly of the State of Missouri, entitled "An act to provide for the registration of voters in cities now having or which may hereafter have 300,000 inhabitants or more; to provide for the creation of a board of election commissioners, provide for its appointment and define its duties; to govern elections in such cities, defining offenses, and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein, and to repeal all acts and parts of acts in conflict or inconsistent herewith," approved June 19th, 1899, is in conflict with the 1st section of the 14th amendment to the Constitution of the United States, in that it abridges the privileges and immunities of citizens of the United States, and denies to citizens of the United States within the jurisdiction of and citizens of the State of Missouri of the equal protection of the laws.

### II.

Said act of June 19th, 1899, denies to citizens of the United States who are inhabitants and citizens of the City of St. Louis, and within the jurisdiction of the State of Missouri, the equal protection of the laws.

### III.

The decision of the Supreme Court of the State of Missouri in the above-entitled case, in sustaining said act of June 19th, 1899, as a valid and constitutional enactment, is a denial to the citizens of St. Louis and of this plaintiff in error, who are within the jurisdiction of the State of Mis-

souri, of the equal protection of the laws and of their privileges and immunities as citizens of the United States.

IV.

The said Supreme Court of the State of Missouri erred in refusing to hold that the bill, No. 760, which passed the Senate of Missouri by a call of yeas and nays, as required by the Constitution of the State of Missouri, was a different bill from that which passed the House of Representatives, and erred in refusing to hold that the bill signed by the president of the said Senate, according to the Senate journal, was a different bill from that which passed the House, to wit, a bill under the following title, to wit: "An act to provide for the registration of voters in cities now having or which hereafter may have 300,000 inhabitants or more; to create the office of election commissioner, provide for his appointment, and define his duties; to govern elections in such cities, defining offenses and providing penalties therefor, and to prescribe rules and regulations governing registration and elections therein."

V.

The Court erred in holding that in the absence of a protest pointing out in what particulars the Constitution of the State of Missouri was violated during the passage of the bill, it would be presumed that the Legislature was not remiss in its duties in that regard, although the journals may have failed affirmatively to record the performance of such duty; and further erred in commenting on the protest which was filed to the act as a local and not a general act, as if the members of the Senate, who filed this protest, having based it on this ground alone, were precluded, or this respondent was precluded, from making the points urged in said Court

against the law, in the face of the fact that the members of the Senate had no opportunity to protest against the signing of a bill under the title of the bill passed by the House, and in the face of the fact that it appears affirmatively by the Senate journal that the only title ever read or heard of in the Senate was the title as hereinbefore set forth.

VI.

The Court erred in not holding that the Senate, having no notice of the change in title of the bill, the members of the Senate could not protest against the signature thereof by its president on the ground that the title had been changed, or was other than that which, according to its own journal, the bill appears to have.

VII.

The Court erred in holding that section 31 of article IV of the Constitution of the State of Missouri, providing for taking the count on the final passage of a bill by yeas and nays, was mandatory, and then holding that the journal of the Senate showed the bill which was passed in accordance with that provision of the Constitution when it was affirmatively shown by the Senate journal that the bill passed by the Senate was different from that passed by the House.

VIII.

The Court erred in holding that the title to the bill is an immaterial part of an act, under the Constitution of the State of Missouri, and that the fact that the title of the bill, as passed by the House, was entirely different from the title of the bill that was passed by the Senate and signed by the president of the Senate, as affirmatively shown by the journals of both houses, was not contrary to the Constitution of the State of Missouri.

IX.

The Court erred in refusing to hold that section 9 of article VIII of the Constitution of the State of Missouri prescribed the methods under which registration laws could be passed in the State of Missouri as being mandatory, and directing the only method by which said registration laws could be passed.

X.

The Court erred in refusing to hold that the limitations of section 5 of article VIII of the Constitution of the State of Missouri limited the legislature to passing the general act for the registration of voters in all cities having over 100,000 inhabitants.

XI.

The Court erred in refusing to hold that section 5 of article VIII of the Constitution of the State of Missouri created a constitutional classification in cities and counties for registration purposes—1st, into cities and counties of over 100,000 population, without regard to the maximum limit in which cities and counties there must be registration; 2nd, cities of over 25,000 and under 100,000 population, in which there may be registration, and 3rd, the rest of the State in which there shall be no registration—and that said section was a mandatory rule controlling the action of the legislature and requiring it to pass general laws on the subject of registration applicable to all cities in the State containing over 100,000 inhabitants.

XII.

The Court erred in refusing to hold that article VIII, section 5 of the Constitution of the State of Missouri was an

affirmative enactment of a new rule, which implied a negative of whatever was not included or is different, and that by the language used therein the thing was limited to be done in a particular form or manner and included a negative that it should not be done otherwise.

XIII.

The Court erred in refusing to hold that in construing section 5 of article VIII of the Constitution of the State of Missouri that when the Constitution defines the circumstances under which a right may be exercised or penalty imposed the specification is an implied prohibition against legislative interference to add to the condition or to extend the penalty to other cases.

XIV.

The Court erred in holding that in the face of section 5 of article VIII of the Constitution of Missouri, the legislature could make special laws for registration purposes applicable to the City of St. Louis, having 300,000 or more inhabitants, alone.

XV.

The Court erred in not holding that the "Nesbit Bill," which the Court held to be constitutional, expressly repealed the act of May 31st, 1895, and left all cities under 300,000 inhabitants in the State of Missouri without any registration act whatever, in the face of the mandatory requirements of section 5 of article VIII of the said Constitution.

XVI.

The Court erred in holding that the "Nesbit Bill" repealed the act of May 31, 1895, so far as regards cities covered by said "Nesbit Bill," and having more than 300,000

inhabitants, leaving the act of May 31, 1895, in force as to cities having 100,000 inhabitants or more, up to 300,000 inhabitants, thereby creating a different rule of registration as to some of the cities in the State of Missouri having over 100,000 inhabitants from the rule of registration prescribed for the City of St. Louis.

XVII.

The Court erred in not holding that if the act of May 31, 1895, was repealed, then the Nesbit law, leaving no law in force as to cities between 100,000 and 300,000, was unconstitutional.

XVIII.

The Court erred in holding that the act of May 31st, 1895, was repealed so far as concerns the "Nesbit" act, thereby holding that said act of May 31st, 1895, as amended by the Caldwell act, applies to cities of over 100,000 and up to 300,000 inhabitants, in face of the fact that this ruling is contrary to the first section of the 14th amendment to the Constitution of the United States, plead in the returns of the respondent and urged by his counsel in their brief and on oral argument, and again presented to the Court on a motion for rehearing herein, for the reason that by section 9 by the act of May 31st, 1895, judges and clerks of election are to be appointed by a board of election commissioners and reported to the Circuit Court of the State for confirmation, with the right of any interested citizen to file objection to such judges and clerks, which objections were to be heard and determined by the Court on a day fixed for that purpose, whereas by section 8 of the Nesbit act the board of election commissioners are empowered to appoint four judges of election and two clerks without any supervisions

whatever, and with no right to the citizens of St. Louis to object thereto or to be heard thereon before any court or judicial body; and, further, that section 31 of the act of May 31st, 1895, makes provision for any voter whose name is refused registration or who is stricken from the registration list to apply to the Circuit Court for reinstatement or registration, which application is to be heard summarily and determined by the Court, and if found qualified, the name is placed upon the registry list, and if refused the applicant is given the right of appeal to the Supreme Court or the Court of Appeals of the State, whereas, under the Nesbit act, by section 21, the Board of Election Commissioners are made the Board of Appeal to hear applications for reinstatement and registration, and no appeal whatever to the Courts is provided, and every citizen of St. Louis is denied his day in Court; all of which is contrary to the said 14th amendment of the Constitution of the United States; and, further, that other differences between the said Nesbit act and the act of May 31st, 1895, apparent upon comparison of the two acts, which show that the citizens of cities and counties of the State of Missouri having 300,000 or more inhabitants are denied equal protection by the laws provided for cities having 100,000 up to 300,000, and their privileges and immunities as citizens of the United States are abridged, notwithstanding the provision of secton 5 of article VIII of the Constitution of Missouri, providing for the registration in cities and counties having a population of over 100,000, and notwithstanding section 3 of article IV of the Constitution of Missouri, providing that in all other cases where general laws can be made applicable no local or special law shall be enacted, and whether the general law could have been made applicable in any case is declared to be a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject.

XIX.

The Court erred in holding that in the passage of the Nesbit bill through the two houses of the General Assembly of the State of Missouri, sections 25, 26, 27, 29, 32 and 38 of article IV of the Constitution of the State of Missouri had not been violated, and in holding that said sections are not mandatory.

XX.

The Court erred in holding that the said act of June 19th, 1899, was not in violation of section 5 of article VIII of the Constitution of Missouri.

XXI.

The Court erred in holding that said act of June 19th, 1899, was not in violation of sections 16 and 53 of article IX of the Constitution of Missouri.

XXII.

The Court erred in holding the said act of June 19th, 1899, to be a constitutional law under section 5 of article VIII, and section 53 of article IX of the Constitution of Missouri.

XXIII

The act of June 19th, 1899, is in violation of the foregoing cited provisions of the Constitution of Missouri, and of the Constitution of the United States.

XXIV.

The Court erred in overruling a motion for rehearing, filed by plaintiff in error, which should have been sustained

for the reasons in said motion for rehearing set out.

All of which is respectfully submitted.

B. SCHNURMACHER,
City Counsellor.

GEO. D. REYNOLDS,
NOBLE & SHIELDS,
MORTON JOURDAN,
Attorneys for Plaintiff in Error.

# BRIEF.

## I.

### SUPREME COURT MUST HAVE JURISDICTION OR WRIT OF ERROR WILL NOT BE ENTERTAINED.

Before this court will entertain a writ of error to the Supreme Court of a state or the Court of last resort thereof, it will first ascertain whether it has jurisdiction.

Newport Light Co. vs. City of Newport, 151 U. S. 527.
Powell vs. Brunswick Co., 150 U. S. 433.
Parmelee vs. Lawrence, 11 Wall. 36.
Railroad Co. vs. Rock, 4 Wall. 177.
Brown vs. Atwell, 92 U. S. loc cit. 329.
Gross vs. United States Mortg' Co., 108 U. S. loc. cit. 484.
Lowler vs. Walker, 14 Howard, 149.
Caperton vs. Brown, 14 Wall. loc. cit. 231.
Roby vs. Colehour, 146 U. S. 153.
Crowell vs. Randall, 10 Peters, 368.
Olds Wagon Works vs. Benedict, 32 U. S. App. 116.

Every power exercised by a court must be authorized by and derived from the law of the land, and be exercised in the manner designated by that law. A writ of errors from the Supreme Court of the United States to review a judgment of the Court of last resort of a state, cannot be entertained unless there is drawn in question the validity of a

treaty or statute of or an authority exercised under, the United States, and the decision is against the validity thereof; or where is drawn in question the validity of a statute of or an authority exercised under, any state on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of their validity, or where any title, right, privilege or immunity is claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is against the title, right, privilege or immunity, specially set apart or claimed by either party under such constitution, treaty, statute, commission or authority.

These jurisdictional powers are authorized by the provisions of section 709, R. S., U. S., 1879. Unless the authority be found therein the writ of error will be dismissed for want of jurisdiction.

Duncan vs. Missouri, 152 U. S. 377.

Bacon vs. Texas, 163 U. S. 207.

Bergeman vs. Backer, 157 U. S. 655.

II.

FEDERAL QUESTION ONLY WILL BE CONSIDERED.

A writ of error to a state court brings before the Supreme Court of the United States nothing but the federal questions involved and raised by the plaintiff in error while the case was pending in the state court.

Waters vs. Mercer, 8 Peters 88.

Barbier vs. Connolly, 113 U. S. 27.

Ashley vs. Ryan, 153 U. S. 436.

III.

FEDERAL QUESTION MUST BE A NECESSARY SUPPORT TO THE JUDGMENT.

It is true the act of the Legislature of the State of Missouri, creating a board of election commissioners, was charged with being in violation of the 14th amendment to the constitution of the United States; but the fact that plaintiff in error so alleged a violation of that amendment in his return to the alternative writ of mandamus, is not of itself sufficient to raise a federal question of which this Court will take cognizance of the case upon a writ of error.

The question as to the violation of the amendment must be involved as a necessary support to the judgment rendered in the case.

Ocean Tus. Co. vs. Polleys, 13 Peters, 137.

Armstrong vs. Treasurer, 16 Peters 281.

Mills vs. Brown, 16 Peters 525.

The federal question must be involved to such an extent that the state court could not have given judgment without deciding it.

Davis vs. Texas, 139 U. S. 651.

Powder Works vs. Davis, 151 U. S. 389.

Johnson vs. Risk, 137 U. S. 300.

Winter vs. Montgomery, 156 U. S. 385.

If it appears the case might have been decided or the judgment rendered on some other ground, without bringing into question any federal constitutional right, the Supreme Court of the United States will not acquire jurisdiction.

Winter vs. Montgomery, 156 U. S. 385.

Seeberger vs. McCormick, 175 U. S. 274.

Remington Paper Co. vs. Watson, 173 U. S. 443.

Pierce vs. Somerset Ry., 171 U. S. 641.

## IV.

### NO FEDERAL QUESTION NECESSARILY INVOLVED.

The Supreme Court of Missouri was not required to pass upon the question as to whether the act of the Legislature violated the 14th amendment to the constitution of the United States, wherein it is alleged that "it 'denies' certain persons who reside in the City of St. Louis, or any city, which now has or may hereafter have, 300,000 inhabitants, 'the equal protection of the laws,' because the Board of Election Commissioners are required to pass upon the qualifications of such persons to exercise the right of suffrage, and does not provide an appeal from the decision of said board to the courts for review, thereby depriving such persons of their right to a day in Court." While the statute does not make the decision of the Board of Election Commissioners final, yet even though it were so provided or construed, that particular part of the statute might be unconstitutional though all other parts be valid. Such being true it was not necessary for the State court, nor has this Court the power, to pass upon the legality of the statute, in order to adjudicate the real reason involved in the case.

The sole question to be determined by the State court, was, whether Isaac M. Mason, as city auditor of the City of St. Louis, should examine and audit the claims and accounts of the Board of Election Commissioners, authorized by the statute in question. There was sufficient of the act undisputably valid, outside of any federal question, to create said Board of Election Commissioners, prescribe their du-

ties, and authorize the auditing of their expense accounts; no more was necessary. It was not essential that the Court should find every provision of the act to be constitutional and valid. So long as the objectionable provisions do not interfere with or destroy the valid provisions, and are not essentially, directly and unconditionally in issue, no court will step out of its judicial path to declare a statute invalid. This has always been the rule of both federal and state courts.

## V.

## PART OF A STATUTE MAY BE HELD VALID AND PART INVALID.

That a part of a law may be constitutional and a part invalid, where the objectionable part may be properly separated from the invalid, is a principle too well settled by the courts of this country to be disputed.

McPherson vs. Blacker, 146 U. S. loc. cit. 41.

State vs. Clark, 54 Mo. 17.

Tarkio vs. Cook, 120 Mo. 1.

Ellsworth vs. Curd, 68 Mo. 282.

State vs. Kring, 74 Mo. 612.

State ex rel. vs. Field, 119 Mo. 593.

State ex rel. vs. Higgins, 125 Mo. 364.

St. Louis vs. St. Louis Ry. Co., 89 Mo. 593.

State vs. Brockstruck, 136 Mo. 335.

Presser vs. Illinois, 116 U. S. 252.

Packet Co. vs. Keokuk, 95 U. S. 80.

Unity vs. Burrage, 103 U. S. 459.

It was therefore unnecessary for the State court to

pass upon the federal question raised, and being unnecessary, no one should be heard to complain on account of its failure to do so.

Had it examined the federal question and declared unconstitutional that particular part complained of, it would not have affected the remainder of the act nor would it have changed the judgment. This plaintiff in error would still have been required, as city auditor, to audit the accounts of the board. Under such circumstances an adjudication or ruling upon the federal question would have availed nothing.

Besides, legislative enactments are always presumed to be constitutional, and it devolves upon the party assailing their validity to prove or show their invalidity. In case of doubt, the doubt will be resolved in favor of their constitutionality. It view of these declarations of law, no court should be required to go out of its way to criticise or declare a statute null and void.

## VI.

## WHERE GROUNDS, OUTSIDE OF THE FEDERAL QUESTION, ARE BROAD ENOUGH TO SUPPORT A JUDGMENT, THE SUPREME COURT WILL NOT INTERFERE.

This Court has held in a long list of cases that where there are grounds for the judgment outside of the federal question, and which are broad enough to support the judgment, the writ of error will be dismissed without a consideration of the federal question.

Seeberger vs. McCormick, 175 U. S. 274.

White vs. Levy, 174 U. S. 91.

Eustis vs. Bolles, 150 U. S. 361.

Rutland Ryd. vs. Central Ver. Ry., 159 U. S. 630.

Bacon vs. Texas, 163 U. S. loc. cit. 227.

Saywood vs. Denny, 158 U. S. 180.

O'Neal vs. Vermont, 123 U. S. 323.

Hall vs. Akers, 132 U. S. loc. cit. 364.

Parmelee vs. Lawrence, 11 Wall. 177.

Railroad Co. vs. Rock, 4 Wall. 36.

Gillis vs. Stinchfield, 159 U. S. 658.

Railway Co. vs. Merrimen, 156 U. S. 478.

The right set up or alleged to exist on account of some federal question must have been determined in express terms or by necessary implication, and must be essential to the maintenance of the judgment.

Isreal vs. Arthur, 152 U. S. 365.

Snell vs. Chicago, 152 U. S. 191.

National Bank vs. Ballong, 150 U. S. 85.

Winter vs. Montgomery, 156 U. S. 385.

Dower vs. Richards, 151 U. S. 658.

Though a federal question may have been raised and decided, yet if a question, not federal, is also raised and decided, and the decision of that question is sufficient to support the judgment, the Supreme Court will not review the judgment on writ of error.

Bank vs. Cadiz Bank, 172 U. S. 425.

Simmerman vs. Nebraska, 116 U. S. 54.

Mo. Pacific Ry. vs. Fitzgerald, 160 U. S. 556.

Fowler vs. Lamson, 164 U. S. 252.

Iowa Central Ry. vs. Tonna, 160 U. S. 389.

Miller vs. Railroad Co. 168 U. S. 131.

Chappell Chem. Co. vs. Sulphur Mines Co., 17 U. S. 465.

It being unnecessary to the validity of the judgment that the federal question be decided the case falls within the general rule that neither state nor federal courts will decide constitutional questions until the *necessity* thereof is shown to exist.

Bakes vs. Grice, 169 U. S. 284.

The State court evidently took that view of the law, in that it failed to discuss or consider in its written opinion, the federal question attempted to be raised.

We must give the action of the State court full faith and credit for having done its duty, and no criticism should be made unless it unmistakably appears that certain rights have been violated or abused.

## VII.

## THE OPINION OF THE STATE COURT FOLLOWED.

The opinion of the State court will be followed as to all questions affecting the violation of the State Constitution. It is the peculiar privilege of state courts to construe their own statutes under the light of their own constitution; and the Supreme Court of the United States will not review their decisions on such questions.

Gormley vs. Clark, 134 U. S. 338.

Powell vs. Burnswick, 150 U. S. 442.

Turner vs. Wilks County, 173 U. S. 461.

Bank vs. Buckingham, 5 How. 419.

Lowler vs. Walker, 14 How. 107.

Statutes valid under the State Constitution and having been so construed by the State court, the Supreme Court of

the United States will not review the question as to whether the State Constitution has been followed.

Kipley vs. Illinois, 170 U. S. 187.

Miller vs. Railway Company, 168 U. S. 134.

Porter vs. Foley, 24 How. 415.

Levy vs. Superior Court of San Francisco, 167 U. S. 175.

Sage vs. Board of Liquidation, 144 U. S. 647.

Thatcher vs. Powell, 6 Wheaton loc. cit. 127.

This Court has no jurisdiction to declare said law void, because it conflicts with the State Constitution, but in determining what questions were passed upon by the State Court, as well as what were necessary to be passed upon in order to render a valid judgment, the opinion of the State court may be examined with a view to determine the same.

Gross vs. United States Mortgage Company, 108 U. S. 477.

Murdock vs. Memphis, 20 Wall. 590.

According to the foregoing principles, this Court will not consider the various assignments of error set up and advanced by plaintiff in error, which have reference solely to the validity of the act of the Legislature creating a Board of Election Commissioners as applicable to the State Constitution. This principle, we have hereinbefore stated, and will not now present further authorities in its support. Under this rule, assignments four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-four, set up by plaintiff in error, must be passed without consideration. Assignments one, two, three and

eighteen are the only ones in which the constitutional question is attempted to be raised, and are the only ones that will be noticed by this tribunal.

## VIII.

## FOURTEENTH AMENDMENT TO CONSTITUTION.

The fourteenth amendment to the Constitution of the United States was the outgrowth of the Civil War, and was adopted primarily for the protection and safety of the colored race. All persons, however, are entitled to the protection afforded by it. This amendment does not prohibit legislation which is limited either in the objects to which it is directed or by the territory within which it is operated. It merely requires that all persons under like circumstances and conditions subjected to such legislation shall be treated alike, both in the privileges conferred and the liabilities imposed.

McPherson vs. Blacker, 146 U. S. loc. cit. 39.

Barbier vs. Connolly, 113 U. S. 37.

Black's Constitutional Law, page 407.

Missouri vs. Lewis, 101 U. S. 22.

Hays vs. Missouri, 120 U. S. 66.

Wurtz vs. Hoagland, 114 U. S. 606.

Railroad vs. Richmond, 96 U. S. 521.

Statutes may be enacted by the several states which operate in certain localities and over certain individuals as a class. In our constitutional system, the power to legislate upon what is ordinarily known as the police power, has been left to the individual states and it cannot be withdrawn from them either in whole or in part.

Black on Constitution, page 407.

Strauder vs. West Virginia, 100 U. S. 303.

Yock Wo vs. Hopkins, 118 U. S. 356.

People vs. King, 110 N. Y. 418.

It has been properly held that this amendment does not affect the State organism or its functions. The equality of rights guaranteed by it prohibits only the enactment of such laws as fail to accord equal protection and privileges to persons of a class and locality.

United States vs. Cruikshank, 92 U. S. 549.

In re Kemenler, 136 U. S. 436.

Bradwell vs. State, 16 Wall. 130.

Crowley vs. Christensen, 137 U. S. 86.

Williams vs. Mississippi, 170 U. S. 213.

Dent vs. West Virginia, 129 U. S. 114.

Tucker on Constitution, Vol. II, Sec. 389.

It is not necessary to here mention the rule that the hardship, impolicy or injustice of state laws is not necessarily an objection to their federal constitutionality and validity. The remedy for evils of that character should come from the State legislature.

Davison vs. New Orleans, 96 U. S. 97.

Railroad Company vs. Hunes, 115 U. S. 512.

## IX.

## RIGHT OF SUFFRAGE NOT A NATURAL ONE.

Under our form of government, the right of suffrage is not a natural right, but a conferred or conventional franchise regulated by the various states for themselves, without the intervention of the constitution of the federal gov-

ernment except as a guaranty that all persons of a class, similarly situated, regardless of race, color or previous condition of servitude, must be treated alike.

Payne on Elections, Sections 10 and 11.

Minor vs. Happersett, 12 Wall. 178.

United States vs. Anthony, 11 Blatchf. 200.

Blair vs. Ridgely, 41 Mo. 161.

Cooley on Constitutional Limitations, pp. 756 and 757.

McCrary on Elections, Sections 1 to 64.

The legislatures of the several states have authority to enact suitable laws governing and regulating elections.

McCrary on Elections, Sec. 44.

Bloomer vs. Todd, 1st L. R. A. 111.

Cooley on Constitutional Limitations, 756.

People vs. Hoffman, 116 Ill. 587.

In the exercise of their right to enact laws regulating and governing elections, the State legislatures may pass statutes providing for the registration of voters. In some states, by constitutional requirements, it is imperative.

Cooley on Constitutional Limitations, 756, 757, 758.

Patterson vs. Barlow, 60 Penn. St. 54.

Capen vs. Foster, 12 Pick. 485.

State vs. Bond, 38 Mo. 425.

McCrary on Elections, Sec. 127.

Cowan vs. Prowse, 93 Ky. 156.

Such registration laws do not add to the constitutional qualifications of the voter.

Hawkins vs. Carroll County, 55 Miss. 735.

Capen vs. Foster, 12 Pick. 485.

McMahon vs. Mayer, 66 Ga. loc. cit. 224.

Cooley on Const. Lim. 5th Ed., p. 756.

Central Law Journal, Vol. 28, p. 210.

Because the law of registration may be made operative in and only apply to cities and towns of a certain class, it will not be held unconstitutional. So in this case, the law is to be applied only to cities of 300,000 inhabitants or more, and because it does only so apply does not invalidate it. It is sufficient if every person who may be within the relation and circumstances described is brought under its protection.

McCrary on Elections, Sec. 128.

Guild vs. Chicago, 82 Ill. 472.

Hundley vs. Commissioners, 76 Ill. 559.

## X.

## ACTIONS OF REGISTRATION OFFICER ARE QUASI JUDICIAL.

Generally speaking, officers in charge of the registration of voters act in a quasi judicial character.

Am. and Eng. Enc. of Law, 1st Ed. Vol. 6, p. 293.

Perry vs. Reynolds, 53 Conn. 527.

People vs. Board, 15 Mich. 427.

Keenan vs. Cooke, 12 R. I. 52.

Auld vs. Watson, 12 La. An. 129.

Murphy vs. Ramsey, 114 U. S. 15 to 46.

Payne on Elections, Sec. 640.

Miller vs. Rucker, 1st Bush. 135.

Sanders vs. Gelchell, 76 Me. 158.

Donahue vs. Richards, 38 Me. 392.

McCrary on Elections, Sec. 294.

Pike vs. Megown, 44 Mo. 491.

Patterson vs. Barlow, 60 Pa. St. 84.

Arrison vs. Cook, 6 D. C. 335.

In some states, by constitutional and statutory provisions, the board of registration act altogether ministerially. Generally, in such cases, the duty of the registration officers is to require certain affidavits to be made by the applicant. When this is done, it becomes the duty of the board of registration to register the applicant whether he be otherwise qualified or not. In matter of

Ward 29 Abb. N. C. 187.

When the board of registration refuse to exercise the duties of their office or to exercise the judgment reposed in them under the law, they may be compelled to do so by mandamus proceedings.

Shipman vs. Com., 73 N. W. R. 817.

Greene vs. Cook Co. Comrs., 176 Ill. 576.

Ex parte Morgan, 114 U. S. 174.

Comrs. vs. McLaughlin, 130 Pa. 578.

Rutledge vs. School Board, 131 Mo. 505.

Ex parte Plippin, 94 U. S. 350.

Ex parte Railroad Company, 101 U. S. 720.

Ex parte Burtis, 103 U. S. 238.

McCrary on Elections, Secs. 379 to 416.

People vs. Board, 65 Hun. 300.

In those states where the registration officers act altogether ministerially they may by mandamus be compelled to register persons applying therefor, who subscribe to such lawful requirement as may be made. In states where the officers act in a quasi judicial manner they can only be required to exercise the judgment and discretion reposed in them. Also, if the judgment be exercised in a corrupt or oppressive manner or in bad faith, mandamus will lie against them. So it cannot be said that under this law, qualified voters are left without a remedy.

## XI.

## THE FEDERAL CONSTITUTION DOES NOT PROVIDE FOR, NOR DOES THE FEDERAL GOVERNMENT UNDERTAKE TO REGULATE, ELECTIONS IN THE VARIOUS STATES OR PRESCRIBE QUALIFICATIONS FOR VOTERS.

The right of suffrage being a political and conventional right, it is regulated by each state for itself, and is not conferred or guaranteed by the federal constitution, except as to the inhibitions contained in the fourteenth and fifteenth amendments to the constitution.

Black on Constitution, 467.

Cooley on Constitutional Limitations, 6 Ed. 752.

As stated above, in the United States the right of suffrage not being conferred by the federal constitution, but left to the several states to be fixed and regulated, subject to the two amendments referred to, it only becomes necessary to inquire in this proceeding, whether either of said amendments is violated by the act of the Missouri Legislature, should the Court conclude a decision thereon to be necessary to support the judgment of the State court. The

fifteenth amendment to the constitution of the United States is not now, and was not in the State Court, brought in question. Not having been considered by the State court, this Court will not consider it here, even though a violation thereof might be found. According to a long established construction of the fourteenth amendment to the constitution, no person or citizen is deprived of his right thereunder unless he be discriminated against; in other words, unless the law assailed does not give him the same protection and privileges and subject him to the same restrictions that all other persons are given and subjected to in the same district or locality and who are found to be in like condition and circumstances.

By the terms of the act of the Legislature of Missouri, creating a Board of Election Commissioners in all cities of 300,000 inhabitants or more, all qualified voters, under the Constitution of Missouri, living in the City of St. Louis or other cities of 300,000 inhabitants or more, are treated alike, that is, subjected to the same restrictions in the formalities of registration. No one is discriminated against and no additional qualification for the right of suffrage is required. Even though the act should provide for additional qualifications than those designated by the Constitution of the State, such additional qualifications could be stricken from the act and yet in all things else, it would remain valid and binding.

Simply because the law is not applicable to all portions of the State does not subject it to the inhibitions found in said amendment. The various conditions of the State do not warrant, and the State Constitution does not require, uniformity in all parts thereof. Nor does the fourteenth amendment to the federal constitution require uniformity in that respect as hereinbefore stated. State laws will not be subject to constitutional attack under the fourteenth

amendment if all persons within their jurisdiction and influence, under the same conditions, are treated alike.

Tucker on Constitution, Vol. II, Sec. 389.

Railway Company vs. Mackey, 127 U. S. 209.

Watson vs. Nevin, 128 U. S. loc. cit. 582.

Wurtz vs. Hoagland, 114 U. S. 606.

Railway vs. Richmond, 96 U. S. 521.

## XII.

## EVEN THOUGH SECTION 21 OF THE ACT CREATING A BOARD OF ELECTION COMMISSIONERS BE DECLARED INVALID, THE PLAINTIFF IN ERROR WOULD NOT BE AFFECTED THEREBY, AS THE REMAINING SECTIONS OF THE ACT WOULD BE SUFFICIENT TO MAINTAIN THE JUDGMENT.

The State court may have considered Section 21 of the act in question violative of the fourteenth amendment to the constitution, and yet their judgment would be valid. This section, in its entirety, provides for the sitting of the commissioners as a Board of Appeals to hear such applications and appeals as may be brought before them, and to provide for the registration of such persons presenting themselves who, on account of sickness or other reasonable cause, failed to register at the proper time. The objection made by the plaintiff in error is that no means of appeal to the judicial tribunals of the State are provided for. If this section should be declared unconstitutional in any proceedings, although it is not necessary to pass upon that question now, all the courts of law would be open then to any person claiming constitutional right thereunder.

McCrary on Elections, Sec. 383.

Conceding that persons making application for registration are entitled by virtue of the force of the fourteenth amendment to the Constitution, to have all questions effecting their right to vote passed upon by the judiciary of the State, yet the principle would apply that where a special remedy is given by statute, the remedy so given is merely cumulative and not exclusive of the ordinary jurisdiction of the Court. This is true unless the manifest intent of the statute be to make the special remedy exclusive. The legislative intent to make this special remedy exclusive must be by affirmative words to that effect.

McCrary on Elections, Secs. 378 to 380.

People vs. Holden, 28 Cal. 123.

People vs. Jones, 20 Cal. 50.

People vs. Kempf, 69 Wis. 470.

The right of suffrage not being a natural right, or a property right, but a conferred conventional political right for the special benefit of the people and not the voter, exercise thereof may be justly regulated by statutes creating boards of registration and providing such suitable safeguards as will best guarantee the public good.

McCrary on Elections, Sec. 378.

State vs. O'Hearn, 58 Vt. 720.

Patterson vs. Barlow, 60 Pa. St. 840.

Ex parte vs. Geisler, 4 Fed. Rep. 190.

The right of suffrage does not exist for the benefit of the individual, but for the benefit of the State itself.

Black on Constitution, 466.

Story on Constitution, Secs. 579 to 580.

Mechem on Public Officers, 145-146.

## XIII.

### THE STATUTE IN QUESTION IS NOT INVALID BECAUSE APPLICANTS FOR REGISTRATION HAVE NOT THE RIGHT TO APPEAL FROM THE DECISION OF THE BOARD OF ELECTION COMMISSIONERS TO THE JUDGES OF THE CIRCUIT COURT.

The right of suffrage not being a natural, vested or property right, but a political franchise, conventionally conferred for public and governmental purposes, there is no reason why the registration officers cannot be created with the duty of determining the qualification of the applicants for registration, and when determined by the exercise of honest judgment and discretion, without corruption or oppression, the judiciary should not interfere.

Gaines vs. Thompson, 7 Wall. 351.
United States vs. Comr. of Land Office, 5 Wall. 563.
Decatur vs. Paulding, 14 Pet. 797.

The duties of the board of election commissioners belong to the executive branch of government and they are responsible for their own acts. The judiciary will not and should not interfere with the judgment and discretion imposed upon such officers when honestly and faithfully exercised. The authority vested in them is peculiarly their own by virtue of the mandate of the same sovereign power that bestows the elective franchise upon individuals.

Cooley on Const. Lim., 5 Ed. 782.
Kendall vs. United States, 12 Pet. 609.

Besides the right of appeal has always been held to be purely statutory; it is so recognized by the federal as well as by the State courts. It may be granted or withheld as

the legislative branch may see proper. There exists no reason why public policy or individual rights should require the legislative branch of the State government to authorize an appeal to the judiciary from the judgment and decision of the commissioners as a board of appeals. It would be authorizing an interference in controversies or differences between officers in their respective duties and departments which should be avoided. In a sense, it would be a clash between the judiciary and executive officials. If the officers authorized to settle questions affecting qualifications of voters refuse to act, or if they act in an oppressive or corrupt manner, an ordinary action at law for damages would be an adequate remedy for any injuries sustained. Besides the usual remedial writs are still at hand for the protection of the voter.

We have stated that there is nothing in the act making the decision of the board final and conclusive. Like election officers in all cases, if illegal votes are allowed to be cast, or competent and legal persons deprived of that right, the privilege of instituting and prosecuting election contests is available and can be exercised. In such cases, courts will not be bound by the action of election officers.

## XIV.

## THE CONSTITUTION OF MISSOURI AUTHORIZES THE DELEGATION OF QUASI JUDICIAL AND DISCRETIONARY POWERS IN THE BOARD OF ELECTION COMMISSIONERS.

Section 5 of Article VIII of the Constitution of Missouri requires the Legislature to enact suitable laws for the registration of voters in all cities of 100,000 inhabitants or more. This is a direct delegation of authority and leaves the matter to the legislature to determine as to the manner of registration and the power of the registration officers.

Constitution of Missouri, Sec. 5, Art. VIII.

In the face of the above requirement of the Constitution no one can question the right of the Legislature to create a Board of Election Commissioners and vest in them sufficient discretionary power and judgment to obtain a complete, accurate and systematic registration of voters in all cities whereby the general public is to be benefited.

It is not essential that the registration laws applicable to all the cities of the State shall be the same. The Constitution of Missouri specifically recognizes this fact. The various conditions of the people, together with the number of inhabitants, demand for certain cities one character of provisions while others require different rules. These, as hereinbefore stated, are questions properly coming before the State courts as affecting the constitutionality of the act measured by the State Constitution. This is not and cannot be, on the authorities hereinbefore given, a violation of the federal constitution or any amendment thereto.

## XV.

## PLAINTIFF IN ERROR, AS AUDITOR OF THE CITY OF ST. LOUIS, CANNOT IN THESE PROCEEDINGS SET UP RIGHT OF INDIVIDUAL VOTER.

Plaintiff in error appears here in his official capacity as city auditor of the City of St. Louis and none of his personal rights under the fourteenth amendment are involved. The question to be determined is only such as affects his office. He should not be permitted to set himself up as the self-constituted guardian of the individual voters and ask the Court to go beyond its necessary scope to declare the act invalid on the sole ground that section 21 of the act is violative of the amendment, that section being entirely separate and distinct from all others and not affecting the validity or practicability of the law, to the extent of declaring the whole act void as a registration law. The question in-

volved is one of power, not of policy. The State Court has determined that the Legislature is clothed with authority to enact the statute in question. The object thereof is to guarantee the people against fraud and corruption in elections, and provide the registration authorized by the Constitution. If the courts find that power exists in the Legislature to do a certain thing, such right will not be disturbed, as it is not for courts to determine what the policy of the law should be or what particular impolicy should be avoided. As to such errors, the Legislature alone is authorized to act.

## XVI.

The fact that there may be a short time intervening between the date of the last meeting of the Board of Appeals to revise the lists of the registration, does not invalidate the act, although no one can vote unless registered.

Throop on Public Officers, Sec. 134.

People vs. Hoffman, 116 Ill. 587.

Weil vs. Calhoun, 25 Fed. Rep. 865.

Subject to the requirement that regulations must be reasonable the power of the Legislature to provide for registration includes the power to exclude from voting those who fail to be registered.

Throop on Public Officers, 135.

People vs. Caine, 33 Cal. 55.

Webster vs. Byrne, 34 Cal. 273.

People vs. Wilson, 62 N. Y. 186.

Cusicks Election, 136 Pa. St. 459.

All questions affecting the constitutionality of registration laws, together with the proposition as to whether

they be reasonable or unreasonable, so long as the fourteenth or fifteenth amendments to the Constitution are not violated, must be passed upon and considered exclusively by the State courts. They alone have jurisdiction over such questions. So that with the questions presented by this subdivision, this Court will have nothing to do; they are for the State courts to decide.

While we contend that section 21 of the act of the Legislature of Missouri creating a Board of Election Commissioners in all cities of 300,000 inhabitants or more, as well as all other provisions thereof, is valid under the Constitution of Missouri (having been so decided by the Supreme Court of that State, and not subject to review by this Court), and does not conflict with any federal constitutional provision, yet we have in part presented the case as though this section were invalid. We have done this for the sole purpose of this presentation, without conceding anything in reality. The law, as it stands, provides a complete system of registration, authorized by the Constitution of the State and declared by the Supreme Court of Missouri to not be in conflict with any of the provisions of the State Constitution.

From the foregoing, it will also be found that none of the provisions of the fourteenth amendment to the Constitution of the United States have been violated, and while it was unnecessary for the State Court to pass upon that proposition in this proceeding, no error was committed in failing to say it violated any of the provisions of the federal constitution, if it did so find. The act being constitutional in its entirety, as well as the fact that it was not necessary for the State Court to pass upon the federal question presented in order to support the judgment obtained, the decision of the Supreme Court of Missouri should be affirmed.

# ARGUMENT.

The questions to be determined by this Court are:

FIRST. Has this Court jurisdiction?

SECOND. Was it necessary for the State Court to pass upon the pretended federal question raised by plaintiff in error in his pleading and assignment of errors?

THIRD: Is there sufficient of the Statute constitutional, after striking out section 21 thereof, which is attacked by plaintiff in error as being violative of the fourteenth amendment to the Constitution, to create the office of the Board of Election Commissioners, prescribing their duties and providing a complete system of registration in cities of 300,000 inhabitants or more?

FOURTH: Are the provisions of section 21 of said act violative of section 1 of the 14th amendment to the Constitution.

FIFTH: Is the plaintiff in error, Isaac M. Mason, in his official capacity as auditor of the city of St. Louis, a competent person to raise the constitutionality of said section, none of his personal rights as a voter being of necessity in issue, in order to enable the State Court to find against him?

In presenting the questions involved in this case we deem it unnecessary to consider any questions involving the validity of the statute, out of which the proceedings arose, so far as the Constitution of Missouri is concerned. All such questions are solely within the jurisdiction of the State courts and their judgments in relation thereto will be final. The opinion of the State Court will be followed in all such

cases. It is only when some federal constitutional statute or treaty is violated that the Supreme Federal Court will take jurisdiction. Speaking of this question in Miller vs. Railroad, 168 U. S. loc. cit. 134, this Court said: "We have no jurisdiction on a writ of error to a state court to declare a state law void on account of its collision with a state constitution, and it was long ago held that where it was objected in the State courts that an act of the State was unconstitutional and void, the objection was properly construed in those courts as raising the question whether the State Legislature had the power under the State Constitution to pass the act, and not as having reference to any repugnancy to the constitution of the United States." So in Porter vs. Foley, 24 How. 415, which has been universally followed, the Court said, "We have no jurisdiction on a writ of error to a State Court to declare a State law void on account of its collision with a State Constitution.

It is the peculiar and sole privilege of State courts to construe their own statutes under the light of their own constitution. Such questions will not be reviewed by the federal courts.

Although a federal question may have been raised in the State Court, it will not be considered by this Court unless a decision thereon be necessary to support the judgment. In fact, it must of necessity be involved to such an extent that the State Court could not have given judgment without deciding it.

Should it appear that the judgment might have been rendered on some ground without bringing into question any federal constitutional right, the federal courts will not acquire jurisdiction.

An examination of the act of the State of Missouri, creating the Board of Election Commissioners shows that the State Court was not necessarily required to pass upon said act as applicable to the question raised by plaintiff in

error concerning the fourteenth amendment to the Constitution.

The only allegation of a federal question advanced by plaintiff in error, either in his assignment of errors here or in his pleadings in the State Court, refer solely to section 21 of the act authorizing a registration of voters in cities of 300,000 inhabitants or more. No other section is made the subject of attack. It is alleged in the assignments of error that the act in question abridges the privileges and immunities of citizens of the United States and denies to citizens of the United States within the jurisdiction of, and citizens of, the State of the equal protection of the laws.

While we are not in possession of a copy of the brief and argument of plaintiff in error, yet the provisions of section 21 seem to be the subject for a specific attack on the ground that it fails to provide a means of review by, or appeal to the judiciary of the State from the actions of the election commissioners when sitting as "Board of Appeals" to review the registration lists as made up by the registration officers, and in registering as voters such qualified persons as may personally present themselves for that purpose, they having been unable to register at the regular time, on account of sickness, absence from the city, or other reasonable cause.

The remaining sections of the act provide for a suitable, reasonable, systematic and practical means for the registration of all qualified voters in the respective cities.

For the sake of argument upon this point only and to give the State Court credit for having done what it considered to be fair and proper, which it is presumed to have done, let us admit the unconstitutionality of section 21 of the act. A proposition which we unqualifiedly refuse to do in fact. When this section is withdrawn from the act, does not sufficient remain to create the office of the election commissioners and fully subscribe to the spirit and letter of section 5 of article VIII of the Missouri Constitution?

A complete system of registration being provided without said section and plaintiff in error occupying and being sued in his official capacity, [redacted] no right to which he is entitled under the constitution of the United States and to which it is alleged section 21 is violative, is presented for consideration. In fact, the separate provisions of this section cannot be drawn into consideration unless they be of such character as to effect the whole statute to such extent as to invalidate it. Unless the entire act be so effected the alleged unconstitutional features thereof are not proper subjects of consideration, and were not a necessary and essential defense to the proceedings while in the State Court.

The sole question to be determined in this case is whether plaintiff in error, as city auditor of the City of St. Louis, should be required to examine and audit the claims and accounts of the Board of Election Commissioners, but in the consideration of that question, it did not become necessary for the State Court to consider the various provisions of the act which had no reference to the organization of the board, the appointment of the various subordinate officers, or the general supervisory and discretionary powers created thereby, unless the provisions of such alleged unconstitutional part be of sufficient breadth and strength to injure the validity of the full context of the act. It was not essential that the Court should find every provision of the act to be constitutional and valid. So long as the various provisions objected to are not in conflict with and do not destroy the valid provisions, they will be given no consideration whatever unless it be essential to the judgment rendered. If this proceeding was based upon the right of some individual voter who claims to be injured on account of such alleged illegal requirement of section 21 or other objectionable features of the act, then the Court would be justified, in fact, in duty bound to consider them; but

until they are brought directly in issue as a necessary adjunct to the judgment the Court will not pass upon them. No court will be required to pass beyond the necessity of the particular case under consideration in order to declare a statute invalid. This rule has been universally adopted by the courts of the various states, and is always followed by our federal courts.

When the objectionable part of the statute may be individually separated from those provisions that are recognized as constitutional and valid without destroying the force and practical effect of the act, the Court will not declare the whole act invalid because of such objectionable parts. This principle is also well recognized by both state and federal courts.

In the case of McPherson vs. Blacker, 146 U. S. loc. cit. 41, the Court said: "But this part of the act is not so inseparably connected in substance with the other parts as to work the destruction of the whole act. Striking out the day for the meeting, which had already been otherwise determined by the act of Congress, the act remains complete within itself and capable of being carried out in accordance with legislative intent."

Nothing seems to be better settled than that a part of a law may be declared unconstitutional and invalid and yet another portion properly separable therefrom be held to be valid. This has been so held, even though the invalid part be contained in the same section with the provisions that are constitutional. This, however, is not the case here. The objectionable features are contained in one section in its entirety. The above rule will always be followed unless it be found that the invalid parts are so mutually related to the valid and so blended together as to make it evident that unless the whole act should be carried into effect it would not have received legislative sanction.

From the foregoing, we arrive at the conclusion that it was absolutely unnecessary for the State Court to pass upon the federal question raised by plaintiff in error. In fact, it was the plain duty of the Court to disregard both the federal question and the provisions of the act to which it referred. Even though the State Court had considered the constitutionality of section 21 and found it to be invalid, its judgment would not have been changed or affected thereby. Plaintiff in error would still have been ordered as city auditor to examine and audit the accounts of the board. Under these circumstances an adjudication of the federal question could not have availed anything.

The rule is, that legislative enactments are always presumed to be constitutional unless the contrary be shown beyond all reasonable doubt, and it devolves upon the party assailing the validity of the statute to prove its unconstitutionality. These considerations are of sufficient moment to warrant the Court in refusing to pass upon questions that are not necessarily involved and which would not, if considered, be essential supports to the judgment, when rendered. The judgment of the State Court being based upon considerations that are sufficient to support it and not depending upon a settlement of the federal question raised, the Supreme Court, upon a writ of error will not reverse the State Court, because of failure to properly consider and pass upon the question as to whether the constitution of the United States or any statute thereof, has been violated. If a judgment is justifiable upon any question outside of a consideration of the federal question, it will not be disturbed. In the case of Seeberger vs. McCormick, 175 U. S. loc. cit. 280, this Court said: "It has been frequently held that a contention, even if formally made, that plaintiffs in error were seeking to avail themselves of some right or immunity under the constitution or laws of the

United States does not give us jurisdiction to review the judgment of the Supreme Court of a state where that judgment was based upon a doctrine of general law, sufficient of itself to determine the case."

An examination of the opinion rendered by the Supreme Court of the State of Missouri discloses an absolute failure to consider the federal question raised. It is not considered in the majority opinion nor by the concurring opinion. We have a right to presume that the Court followed previous decisions on the subject and disregarded the federal question on the ground that it was, not necessarily involved and not essential to the maintenance of the judgment. The fact that the unconstitutional or invalid parts of the act remain upon the statutes without being declared void is not sufficient justification warranting plaintiff in error to refuse to perform whatever legal duties may be devolved upon him as an officer. These alleged unconstitutional provisions will be cared for in their regular order when some person becomes aggrieved thereby and makes a proper presentation to the judicial tribunals of the State and federal Government. The validity of section 21 of said act in no wise concerns plaintiff in error as auditor of the City of St. Louis. Although it may be unconstitutional and void, when certain duties are required of him which are legal and can be enforced these legal duties and requirements cannot be set aside and disregarded for the simple reason that certain parts of the law are unconstitutional and void, such parts being totally distinct and having nothing whatever to do with the issues involved in the controversy and in no wise concerning the official requirements of the person assailing them.

II.

REGISTRATION LAWS.

Peculiar to their form of government, the several states have the indisputable right to enact laws for the safety and

security of the ballot. They possess these powers along with many others, and so long as all persons falling under the provisions thereof are treated alike, guaranteed like privileges and subjected to like qualifications and restraints, no federal constitutional mandate will be violated.

The right of suffrage is secured to the interests of all, though not a right to be exercised by all. From the very nature of things, no government should extend suffrage to all the people thereof, nor is there any such federal guaranty. The privilege should be extended to only those who will and may subserve the ends of good government by the proper use thereof; the object always being to promote and continue good government as well as to preserve and perpetuate its benefits.

The right of suffrage is not a natural right. It has always been held to be a conferred and conventional franchise regulated by the various states for themselves without the intervention of the federal government, except as to the guaranty that all persons similarly situated, regardless of race, color or previous condition of servitude, must be treated alike.

The several states being possessed of sovereign power to confer the right of suffrage, they also, of necessity, are clothed with authority to provide such rules governing elections as in their judgment protect the electorial franchise, prevent fraud and corruption in the use of the ballot as well as guarantee the sacredness and purity thereof.

Among rules affecting elections which it is competent for the legislatures of the various states to prescribe are those providing for the registration of voters. This right is generally authorized by the constitutions of the various states and of late years seems to have been absolutely indispensible. In large cities, such as St. Louis, it is recognized as an unquestioned necessity for the protection of the voter as well as the purity of the ballot-box.

It is so recognized by the Constitution of Missouri, for by the provisions of section 5 of article VIII thereof, it is made the unqualified duty of the Legislature to provide suitable registration laws for cities of 100,000 inhabitants and more, and in its discretion may provide for the registration of voters in cities of 25,000 and under 100,000 inhabitants. In accordance with the provisions of this section of the Constitution, the act in question was passed and is now assailed by plaintiff in error because in conflict with the fourteenth amendment to the Constitution. The fourteenth amendment to the Constitution of the United States is the outgrowth and result of the Civil War. In his work on the Constitution, Story, at section 1928, says: "The fourteenth article of the amendments, to which we now direct our attention, must find its justification in the great changes brought about by the Civil War, and in the disorders following and resulting therefrom, and which seems to render new precautions and new securities important, if not imperative. Those disorders, it must be confessed, were not so serious as might reasonably have been anticipated, when the magnitude of the great social change was considered, and the circumstances under which it was finally consummated were kept in view. A great, brave, but unsuccessful army was now broken up and remanded to civil life; many of its members had been reduced by the war from affluence to poverty; they returned to their homes to find the persons who had been their lawful slaves elevated by means of the military successes over them to a condition of equality before the law with themselves; they returned to find labor disorganized, the whole social life changed, their own prospects, anticipations and hopes seriously impaired; the freedmen whom they had always been taught to consider their inferiors, had assisted in effecting this revolution, and were now rejoicing over the very events which worked discomfiture and disaster to their late mas-

ters. Yet in the hands of the latter was still the political authority; in numbers they predominated; they were superior in intelligence; the colored people were still in great measure dependent upon them for subsistence; and it was unreasonable to expect that the relations between the two classes were to be adjustd to the new circumstances without the feelings and passions which war and emancipation had engendered finding occasional expression in acts of disorder, injustice, and violence. The disbandment of a great army is always a circumstance of no little solicitude and danger, but it is doubly so when it must be scattered among a people who have been elevated from slavery to manhood by its defeat, but who, nevertheless, being the weaker in numbers and resources, must be more or less dependent on the defeated army for just and kind treatment, and even for the means of subsistence."

At section 1929, the same author states: "Nor were some other circumstances to be overlooked when the legislation, temporary or permanent, which the times demanded came to be considered. Persons who had held high positions in the states and the nation; had been prominent and active in the effort to create a new confederacy on the ruins of the Union, and reasonably might be expected to retain after their failure some degree of dissatisfaction with the government whose workings they had thought would justify a revolution, and from which, in consequence, they had endeavored, though in vain, to withdraw their section. In aid of the rebellion a very large indebtedness had been contracted, which the courts now held to be illegal and worthless, but which, nevertheless, a very considerable number of persons were interested in, and a still greater number believed to be just and deserving of payment. The debt, on the other hand, which had been created by the government to carry on the war, the same classes, and perhaps

others, might be willing to repudiate, under the pretence that it had been incurred for a purpose which, in their view, ought not to have been accomplished. To Congress and to the majority of the people it seemed clear that these circumstances demanded additional securities by way of constitutional amendment, not only for the purpose of protecting the newly conferred rights and liberties of the African race, but also to secure against possible dangers the credit of the states and the honor of the general government. And, acting on this belief, Congress, in June, 1866, submitted to the states a further amendment, which, two years later, after having received in due form the approval of the requisite number of the states, was published by direction of the Secretary of State, as duly ratified."

Our attention is specifically called to the provisions of section one of the fourteenth amendment to the constitution that no state shall deny to any person within its jurisdiction the equal protection of the laws. "This clause," says Judge Story, "of its own force neither confers rights nor gives privileges; it sole effort is to insure impartial legal protection to such as under the law may exist." "When it comes to be applied," says the Chief Justice in Roberts vs. Boston, 5 Cush. 206, "to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed with the same civil and political powers, and that children and adults are entitled to the same functions and be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security. But these rights to which individuals, in the variety of circumstances by which they are surrounded in society, are entitled, must depend upon the laws adopted and their respective relations and conditions." A discrimi-

nation between classes of persons upon good reason therefor, is not in violation of this clause of the amendment. Legislation by the several states is not affected by the fourteenth amendment, so long as it is provided that all such persons subjected to such legislation, shall be treated alike, under like circumstances and conditions, both in privileges conferred and liabilities imposed. In the case of McPherson vs Blacker, 146 U. S. loc. cit. 39, the Court, in speaking of the fourteenth amendment, said: "The object of the fourteenth amendment in respect to citizenship was to preserve equality of rights and to prevent discrimination as between citizens, and not a radical change of the whole theory of the relations of the State and federal governments, or of either or of both governments and the people. The inhibition that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any persons or class of persons from being singled out as a special subject for discrimination and hostile legislation." In the case of Barbier vs. Connelly, 113 U. S. 237, the Court, in speaking of this amendment, remarked: "Class legislation, discriminating against some and favoring others, is prohibited, but legislation, which in carrying out the public purpose and limited in its application, if within the spirit of its operation it affects alike all persons similarly situated, is not within the amendment." According to adaptability, necessity and advisability, the State may establish one system of law for one portion of its territory and another system in another portion without encroaching upon the constitutional guaranties of the fourteenth amendment. Local conditions, as well as necessity of circumstances, often demand and require different statutory enactments from those of other localities. There is nothing irregular or unconstitutional about such laws. They are a recognized necessity for the protection of the general wel-

fare of the people of the State. Regulations that may be necessary in a certain class of localities cannot, from the very nature of things, be suitable to another and different class of localities. What is true of localities may also be said to be true of individuals, as separated into their respective classes. A citizen cannot claim a broad and unqualified right to the protection of the same laws and demand that full application be given thereof in all parts of the State; the only essential being, that he shall not be denied the same protection of the laws which are accorded to other persons in the same place and in like condition and circumstance.

It will be observed that by the amendment in question no privileges or immunities were conferred upon the citizen. It merely provided an additional guaranty for the enforcement of those already existing.

In conferring the right of suffrage upon a certain class of citizens by wholesome rules and regulations and denying the right to others as a class, which go to personal qualifications is not and never has been held to be an abridgment of the privileges and immunities of citizens of the United States. The several states, having a sovereign right, independent of the federal government, to enact suitable constitutional and statutory provisions regulating elections and conferring the elective franchise upon such as may be deemed best for the public good, no standard fixed by the State will be attacked by the federal constitution unless there be an unjust discrimination on account of race, color or previous condition of servitude.

The fourteenth amendment was not adopted for the purpose of prohibiting the several states from prescribing their own necessary qualifications for right to vote. This amendment does not attempt to confer the right to vote or put such regulations in the hands of the federal government.

"The right of suffrage is a state privilege, belonging to state citizenship, and is exclusively under state jurisdiction," says the Court in Minor vs. Happersett, 21 Wall. 129.

The right to govern and conduct elections, prescribing qualification of voters and conferring the electorial franchise in general belonging absolutely to the State, subject to the inhibitions contained in amendment 15 to the constitution of the United States, the same principle attaches as in case of police regulations, where full power is left to the states. Such state legislation trenches upon no right or privilege guaranteed the citizen under the federal constitution. So long as all persons similarly situated and circumstanced are treated alike and granted the same protection under the laws of the state to which they belong, no federal right is violated. It is not essential, as has been seen, that the law shall apply to all persons of the State for the government of all alike. It may be confined in its application to certain localities as public policy and state good may require.

## III.

## "EQUAL PROTECTION OF THE LAWS."

It is charged that the act deprives certain persons of the "equal protection of the laws." The basis of this objection is that under the law governing cities of 100,000 and less than 300,000 inhabitants the person presenting himself for registration may, if he desire, appeal from the decision of the registration officers to the judges of the circuit court, who are required summarily to pass upon the question and, if satisfied of such persons qualification to order his name placed on the registration list, while, according to the act in question, which controls in cities of 300,000 inhabitants or more, the applicant for registration may if he is rejected by the registration officers, present his case to the Election

Commissioners of such city, when sitting as a "Board of Appeals." Should they, as such board of appeals after investigating and hearing, conclude the applicant not qualified and refuse to place his name on the registration list, the act does not provide an appeal to the judges of the circuit court of such city. Therein lies the difference which is the real basis of the criticism. It is sufficient answer to say the legislature of the State is not required to give each locality the same law, nor provide the same regulations for all. This principle has been previously stated. Nor is it essential in any case that an appeal to the judiciary be provided.

The election commissioners in cities of 300,000 inhabitants or more, will be presumed on account of the importance of their office, to be men of ability, experience and integrity, capable of passing upon all matters coming before them. While sitting as a board of appeals they act quasi judicially. They act in the same manner and exercise similar powers as various other executive officers from whose decision there is no appeal. All persons residing in cities of that class are treated alike, having the same right to present their right to vote to the commissioners sitting as a "Board of Appeals."

If it be essential that an appeal be provided for in this case in order to protect each citizen in his right to vote and guarantee him "equal protection of the laws," then there should be a mode of appeal to the judiciary from the judgment and discretion of all executive officers who act in a *quasi* judicial manner. Such a requirement would upturn long established principles and completely submerge the courts with unnecessary litigation, as well as disturb our present political system both State and national. The executive department would become subordinate to the judicial and thereby fail to be co-ordinate with it. It is plain that no such right exists unless it can be justified on the

grounds that where it exists in one class of cities or localities it should also exist in all other classes as well. There is no reason in such position. A complete system being furnished and adequate means being afforded for the determination of the respective rights of the applicants presenting themselves for registration no constitutional right is abridged or denied. The fact that the states are lawfully permitted to adopt different rules and regulations for the various cities and localities, clothes them with the right to provide different modes and means of determining the right of the people of the respective cities and localities, as classified, to vote.

To be required to adopt the same formality in this respect and make it uniform throughout the State and the various cities thereof would, under the same principle require the same uniformity in all other formalities and requirements. With that principle adopted, section 5 of article eight of the Constitution would be largely ineffective, for the same laws would have to be enacted for all portions of the State and the various counties and cities thereof, instead of limiting it to cities of not less than 25,000 inhabitants and making it mandatory so far as cities of 100,000 inhabitants or more are concerned. Such is not the law. Counsel for plaintiff in error will not so contend.

But aside from the foregoing, there is nothing in the act that makes the decision of the election commissioners final. So far as the judiciary is concerned, the election commissioners occupy the same position as has always been held with reference to the decision of judges of election in election contest cases. In those cases, the finding of the judges has never been held to be final, but may be reviewed and reversed as courts may in such cases see just and proper. This statute takes away none of the rights regarding contested election cases. It leaves the actions of the Board

of Commissioners and judges of election appointed thereunder open to full, fair and complete investigation in the conduct and trial of a contest of election.

Then, too, courts will not be deprived of their jurisdiction, and if the board should act corruptly or with oppression, it can be proceeded against by mandamus and compelled to exercise the judgment and discretion imposed in them.

From the circumstances surrounding elections, confidence must be reposed somewhere. Elections are held in one day, and certain persons must be called upon to judge of the qualifications of the voters, or some regulation must be adopted by which the qualification will be obtained in advance. In the country districts and small cities and towns, this can be reposed in the judges on election day, but in our larger cities the necessity of obtaining such information in advance has been found to be necessary.

The rules and regulations governing elections in the cities are adopted suitable to the population thereof and the various grades and classes of citizens therein. Being authorized by the Constitution of Missouri, and entirely beyond the power of the federal government save as to the fifteenth amendment, we submit the act in question is not in conflict with any provision of the fourteenth amendment to the constitution of the United States.

The Supreme Court of the State has examined the act and found it not to be in conflict with the Constitution thereof. This Court will give that proposition no consideration whatever. We have not, therefore, considered the assignment of errors presented by plaintiff in error, which refer to a conflict with a State Constitution, but confined ourselves exclusively to the federal question attempted to be raised.

While the act itself shows the Legislature of the State had in view a complete system of registration and elec-

tions in all cities applicable thereto and provides ample security for an honest ballot as well as full restraint of all that may be illegal; yet, it is not for this Court to determine as to the policy of the law. The question here involved is one of power, not policy. It is a part of the political system of the State, on which its offices, and its very existence depends.

No provision of the fourteenth amendment to the constitution of the United States being violated and no other federal question involved, the judgment of the State Court should be affirmed.

EDWARD C. CROW, Attorney-General,
SAM B. JEFFRIES, Ass't Att'y-Gen'l,
For Defendant in Error.

No. 258. 25702



**No. 258.**

In this official compilation of election laws of Missouri will be found the provisions of the **Constitution** relating to suffrage and elections, page 3 (sec. 9, art. II, Bill of Rights), and pages 4, 5, and 6, being article VIII.

**The law of 1895,** including the amendments of 1899 and prior years, is at pages 97 to 149, being article IX of chapter 102, Revised Statutes 1899, title omitted.

**The law of 1899,** referred to as the **"Nesbit law,"** is at pages 73 to 97, being article VIII, chapter 102, Revised Statutes 1899, title and repealing section (section 49) omitted.

We have numbered on the margin the corresponding sections of the Nesbit law.

The sections of the **General Crimes law** referred to in our brief will be found, with corresponding section numbers, at pages 150 to 158, being sections 2110 to 2118.

The law governing **election of Presidential electors** is at pages 161 to 164. (See section 6620, page 162.)

The sections of the law regulating party conventions, committees, etc., referred to in point (E), pages 71 and 72 of our statement and brief, is at pages 30 to 41; 44 to 54; 63 to 65.

The sections relating to **qualifications** of voters are:

**Constitution,** section 9, article II, page 3; article VIII, sections 2, 8, 10, 11, pages 4 to 6.

**General law** of the State, section 6994, page 10.

**Law of 1899,** Nesbit law, section 7236, page 79.

Law governing election of members of Congress. pp. Ex. Sec. 6982

2570

☞County Clerks are required to PRESERVE THIS PAMPHLET and to see that copies accompanying each set of poll-books are returned to their offices with the returns of election. Sec. 7004, Rev. Stat. 1899.

# PROVISIONS

OF THE

# ELECTION LAWS

OF THE

# STATE OF MISSOURI

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PRESCRIBING THE QUALIFICATIONS AND DUTIES OF VOTERS AND ELECTION OFFICERS, AND IMPOSING PENALTIES UPON ELECTION OFFICERS AND VOTERS AND PERSONS ATTEMPTING OR OFFERING TO VOTE IN NEGLECT OR VIOLATION OF LAW, ETC.

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COMPILED FROM THE STATE CONSTITUTION AND LAWS,
AND PUBLISHED UNDER AUTHORITY OF SECTION 7004, REV. STAT. 1899,
BY A. A. LESUEUR, SECRETARY OF STATE.

JEFFERSON CITY, MO.:
TRIBUNE PRINTING COMPANY, STATE PRINTERS AND BINDERS.
1900.

# ELECTION LAWS OF MISSOURI.

## CONSTITUTION OF 1875.

### BILL OF RIGHTS.

#### ARTICLE II.

SEC. 9. **Elections must be free and open.**—That all elec ons shall be free and open; and no power, civil or military, shall at y time interfere to prevent the free exercise of the right of suffrage.

### EXECUTIVE OFFICERS.

#### ARTICLE V.

SEC. 2. **Terms of office—governor and treasurer ineli- ble to re-election—times of holding elections.**—The term office of the governor, lieutenant-governor, secretary of state, state ditor, state treasurer, attorney-general and superintendent of pub- schools shall be four years from the second Monday of January xt after their election, and until their successors are elected and alified; and the governor and state treasurer shall be ineligible to election as their own successors. At the general election to be held the year one thousand eight hundred and seventy-six, and every r years thereafter, all of such officers, except the superintendent of blic schools, shall be elected, and the superintendent of public ools shall be elected at the general election in the year one thou- d eight hundred and seventy-eight, an every four years thereafter.

SEC. 3. **Returns—tie, how determined.**—The returns of ry election for the above named officers (b) shall be sealed up and nsmitted by the returning officers (c) to the secretary of state,

(a) 41 Mo. 63. Poll-tax cannot be imposed for failure to vote. 136 Mo. 475.
(b) See sec. 7018, R. S. '99, for list of the officers referred to.
(c) The returning officers are the county clerks, and in St. Louis City, the board ection commissioners.

directed to the speaker of the house of representatives, who sha immediately after the organization of the house, and before proce ing to other business, open and publish the same, in the presence of majority of each house of the general assembly, who shall for th purpose assemble in the hall of the house of representatives. T person having the highest number of votes for either of said offic shall be declared duly elected; but if two or more shall have an equ and the highest number of votes, the general assembly shall, by joi vote, choose one of such persons for said office.

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## SUFFRAGE AND ELECTIONS.

### ARTICLE VIII.

SECTION 1. **General elections, when held.**—The gene election shall be held biennially on the Tuesday next following t first Monday in November. The first general election under this co stitution shall be held on that day, in the year one thousand eight hu dred and seventy-six; but the general assembly may, by law, fix a d ferent day—two-thirds of all the members of each house consenti thereto. (a)

SEC. 2. **Electors, qualifications of.**—Every male citizen the United States, and every male person of foreign birth who m have declared his intention to become a citizen of the United Stat according to law, not less than one year nor more than five years b fore he offers to vote, who is over the age of twenty-one years, posse ing the following qualifications, shall be entitled to vote at all el tions by the people:

*First*—He shall have resided in the state one year immediate preceding the election at which he offers to vote.

*Second*—He shall have resided in the county, city or town whe he shall offer to vote at least sixty days immediately preceding t election. (b)

SEC. 3. **Elections, how conducted and contested.**—A elections by the people shall be by ballot; every ballot voted shall numbered in the order in which it shall be received, and the numb recorded by the election officers on the list of voters, opposite t name of the voter who presents the ballot. The election officers sh be sworn or affirmed not to disclose how any voter shall have vot

(a) The omission to hold an election at a proper time cannot be supplied by subsequent one not provided for by law. 43 Mo. 261.

(b) "Citizen," as ordinarily used, means one entitled to vote. 92 Mo. 300; 127 628, 636.

25705

unless required to do so as witnesses in a judicial proceeding: *Provided*, that in all cases of contested elections the ballots cast may be counted, compared with the list of voters, and examined under such safeguards and regulations as may be prescribed by law. (c)

SEC. 4. **Voters free from arrest, when.**—Voters shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

SEC. 5. **Registration in cities and counties.**—The general assembly shall provide, by law, for the registration of all voters in cities and counties having a population of more than one hundred thousand inhabitants, and may provide for such registration in cities having a population exceeding twenty-five thousand inhabitants and not exceeding one hundred thousand, but not otherwise. (d)

SEC. 6. **Elections, viva voce, when.**—All elections, by persons in a representative capacity, shall be *viva voce*. (e)

SEC. 7. **Residence as voter not gained or lost, when.**—For the purpose of voting, no person shall be deemed to have gained a residence by reason of his presence or lost it by reason of his absence while employd in the service, either civil or military, of this state or of the United States, nor while engaged in the navigation of the waters of the state or of the United States, or of the high seas, nor while a student of any institution of learning, nor while kept in a poor-house or other asylum at public expense, nor while confined in public prison. (f)

SEC. 8. **Who disqualified as voters.**—No person, while kept at any poor-house or other asylum, at public expense, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this state.

SEC. 9. **Contested elections, trials of.**—The trial and determination of contested elections of all public officers, whether state, judicial, municipal or local, except governor and lieutenant-governor, shall be by the courts of law, or by one or more of the judges thereof. The general assembly shall, by general law, designate the court or judge by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law, assigning jurisdiction or regulating its exercise, shall ap-

(c) Ballots cannot be opened and counted except in cases of contested elections. 8 Mo. 557; 7 A. 106; 68 A. 121. Appellate courts will not inquire into the legality of votes. 77 Mo. 189; see 130 Mo. 621; 128 Mo. 256; 130 Mo. 530; 112 Mo. 213.

(d) Registration of voters in certain cities, act valid. 85 Mo. 64, overruling 15 A. 461; see 121 Mo. 505; 126 Mo. 652; 122 Mo.68. Prospecting operation. 98 Mo. 426.

(e) 128 Mo. 256.

(f) 130 Mo. 621.

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ply to any contest arising out of any election held before said law shall take effect. (g)

SEC. 10. **Criminals may be disqualified.**—The general assembly may enact laws excluding from the right of voting all persons convicted of felony or other infamous crime, or misdemeanors connected with the exercise of the right of suffrage.

SEC. 11. **Officers, soldiers and marines disqualified.**—No officer, soldier or marine in the regular army or navy of the United States shall be entitled to vote at any election in this state. (h)

SEC. 12. **Aliens not to be appointed or elected.**—No person shall be elected or appointed to any office in this state, civil or military, who is not a citizen of the United States, and who shall not have resided in this state one year next preceding his election or appointment. (i)

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## TOWNSHIP ORGANIZATION.

### ARTICLE IX.

SEC. 8. **Township orgainzation—county justices.**—The general assembly may provide, by general law, for township organization under which any county may organize whenever a majority of the legal voters of such county, voting at any general election shall so determine; and whenever any county shall adopt township organization, so much of this constitution as provides for the management of county affairs, and the assessment and collection of the revenue by county officers, in conflict with such general law for township organization, may be dispensed with, and the business of said county, and the local concerns of the several townships therein, may be transacted in such manner as may be prescribed by law: *Provided*, that the justices of the county court in such case shall not exceed three in number. (j)

SEC. 9. **Township organization discontinued, how.**—In any county which shall have adopted "township organization," the question of continuing the same may be submitted to a vote of the electors of such county at a general election, in the manner that shall be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, it shall cease in said

(g) 134 Mo. 10; 126 Mo. 652. School director. 112 Mo. 213; 88 Mo. 567; 81 Mo. 7; 25 A. 563.

(h) 140 Mo. 523.

(i) 137 Mo. 636; 41 Mo. 227.

(j) 138 Mo. 187; 123 Mo. 72; 55 Mo. 295; 49 Mo. 468.

25706

county; and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county.

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## MODE OF AMENDING THE CONSTITUTION.

### ARTICLE XV.

SECTION 1. **Constitution, how amended.**—This constitution may be amended and revised only in pursuance of the provisions of this article. (k)

SEC. 2. **General assembly may propose amendments—submitted to vote.**—The general assembly may, at any time, propose such amendments to this constitution as a majority of the members elected to each house shall deem expedient; and the vote thereon shall be taken by yeas and nays, and entered in full on the journals. The proposed amendments shall be published with the laws of that session, and also shall be published weekly in some newspaper, if such there be, within each county in the state, for four consecutive weeks next preceding the general election then next ensuing. The proposed amendements shall be submitted to a vote of the people, each amendment separately, at the next general election thereafter, in such manner as the general assembly may provide. If a majority of the qualified voters of the state, voting for and against any one of said amendments, shall vote for such amendment, the same shall be deemed and taken to have been ratified by the people, and shall be valid and binding, to all intents and purposes, as a part of this constitution. (l)

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(k) As to the mode of amending Constitution, see "Elections on Constitutional Amendments," Chap. 102, Art. 3, in this pamphlet.

(l) Power to amend Constitution discussed. 40 Mo. 192. Duty of Supreme Court as to amendments proposed by Legislature. 4 Mo. 303; 132 Mo. 410.

# REVISED STATUTES, 1899.

## GENERAL ELECTIONS REGULATED.

### CHAPTER 102.

#### ARTICLE I.

SEC. 6981. **Election of state officers.**—On the first Tuesday after the first Monday in November in the year 1880, and every four years thereafter, there shall be an election held in each township in this state and in each ward of the city of St. Louis for the election of governor, lieutenant-governer, secretary of state, state auditor, state treasurer and attorney-general, who shall hold their offices for the term of four years after the second Monday in January next after their election, and until their successors are elected and qualified. (R. S. 1889, § 4657.)

SEC. 6982. **Election of congressmen, etc.**—On the first Tuesday after the first Monday in November, in the year 1880, and every two years thereafter, there shall be an election held in each township in this state, and in each ward of the city of St. Louis, for the election of a member of congress from each congressional district, of senators and representatives in those districts and judges of the county courts in those counties where the term of those elected has expired, and for sheriffs and coroners, and such other officers as may be required by law to be elected at such elections. (R. S. 1889, § 4658—a.)

SEC. 6983. **How to proceed in certain cases.**—If the court fail to designate the place of holding the election or to appoint judges, or the judges appointed fail to act, it shall be the duty of the sheriff to fix the place, and the voters, when assembled, may appoint the judges. (R. S. 1889, § 4659.)

SEC. 6984. **County court may establish and alter election precincts.**—The county courts of the several counties in this state shall have power to divide any township in their respective

(a) 43 Mo. 261.

counties into two or more election districts, or to establish two or more election precincts in any township, and to alter such election districts and precincts, from time to time, as the convenience of the inhabitants may require. (R. S. 1889, § 4660.)

SEC. 6985. **Order defining election districts.**—Every order made under the provisions of the preceding section shall describe the several districts erected, and the boundary of each, or the precincts established, and the name of each; and the clerk shall, within twenty days after the making of the order, make out one copy thereof for each district erected or altered or precinct established thereby, and deliver the same to the sheriff of the county, who shall cause one such copy to be put up at a public place in each district, or at each precinct, within six days after the same shall be delivered to him. (R. S. 1889, § 4661.)

SEC. 6986. **How elections shall be conducted.**—The place of holding the elections shall be designated, and the judges and clerks of election appointed in such districts or for such election precincts, and the elections therein shall be conducted, in all respects, in the same manner as is hereinafter provided by law for the townships. (R. S. 1889, § 4662.)

SEC. 6987. **Poll-books, how furnished—returns, how made.**—Poll-books for each district or election precinct shall be made and furnished to the judges of election therein, in the same manner as hereafter provided in respect to poll-books for each township, and returns shall be made to the office of the clerk of the county court, as in the case of a township forming one election district. (R. S. 1889, § 4663.)

SEC. 6988. **Election to fill vacancy.**—When the governor issues a writ of election to fill any vacancy, he shall mention in said writ how many days, to be not less than ten, the sheriff shall give notice thereof. (R. S. 1889, § 4664.)

SEC. 6989. **Oath of judges of election.**—The judges, before entering upon their duties, shall take the following oath:

I do solemnly swear that I will impartially discharge the duties of the present election, according to law, to the best of my ability, and that I will not disclose how any voter shall have voted, unless I am required to do so as a witness in the proper judicial proceeding, so help me God.

In cities where registration exists, they shall also take the additional oath that they will not allow any person to vote whose name is not duly registered according to law, which oath shall be administered by one of their own body, who in turn may be sworn by one of the other judges. (R. S. 1889, § 4665—b.)

(b) 67 Mo. 331; 54 Mo. 502; 46 Mo. 450; 44 Mo. 346; 43 Mo. 290; 41 Mo. 63.

SEC. 6990. **Clerks of election.**—The judges shall appoint four clerks, who, before entering on the duties of their appointment, shall take an oath or affirmation, to be administered by one of the persons appointed or elected judges of the election, that they will faithfully record the names of all the voters; said clerks shall also take the oath above prescribed for the judges, to be administered at the same time and in the manner heretofore directed. (R. S. 1889, § 4666.)

SEC. 6991. **Polls, when opened and closed.**—The judges of each election hereafter to be held, general or municipal, shall open the polls at seven o'clock in the morning and continue them open until six o'clock in the evening, unless the sun shall set after six, when the polls shall be kept open until sunset, except in cities in the state of twenty-five thousand inhabitants or upward, when the polls shall be open at six o'clock in the morning and be kept open until seven o'clock in the evening. (R. S. 1889, § 4667—c.)

SEC. 6992. **Voting to be by ballot.**—All elections shall be by ballot, and continue for one day only. (R. S. 1889, § 4668.)

SEC. 6993. **Ballot-boxes to be provided—duty of constables.**—The sheriffs of their respective counties shall provide, at the expense of their counties, two ballot-boxes for each precinct in each municipal township in said counties, and deposit the same with the constable of the proper township, whose duty it shall be to preserve the same, and have such boxes present at the proper time and place, at all elections in his township, for the use of the judges of the elections. Said constables shall deliver said boxes to their successors in office within ten days after their successors shall have been qualified, and in default thereof shall forfeit ten dollars, to be recovered by civil action before any justice of the peace at the suit of the constable of the township in which such delinquent resides, and shall be paid into the treasury of the county for the use of its common schools. (R. S. 1889, § 4669.)

SEC. 6994. **Qualifications of voters.**—Every male citizen of the United States and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, possessing the following qualifications, shall be entitled to vote at all elections by the people: First, he shall have resided in the state one year immediately preceding the election at which he offers to vote; second, he shall have resided in the county, city or town where he shall offer to vote at least sixty days immediately preceding the election; and

(c) 130 Mo. 621.

25708

each voter shall vote only in the township in which he resides, or if in a town or city, then in the election district therein in which he resides: *Provided, however,* that no officer, soldier or marine in the regular army or navy of the United States, shall be entitled to vote at any election in this state; *and provided further,* that no person while kept at any poor-house or other asylum at public expense, except the soldiers' home at St. James and the confederate home at Higginsville, nor while confined in any public prison, shall be entitled to vote at any election under the laws of this state; nor shall any person convicted of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, be permitted to vote at any election unless he shall have been granted a full pardon; and after a second conviction of felony or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, he shall be forever excluded from voting. (R. S. 1889, § 4670, amended, Laws 1897, p. 109—d.)

SEC. 6995. **Duty of judges.**—The judge to whom any ticket shall be delivered shall, upon receipt thereof, pronounce in an audible voice the name of the voter; and if the judges shall be satisfied that the person offering to vote is a legal voter, his ticket shall be numbered and placed in the ballot-box without inspecting the names written or printed thereon, or permitting any other person or persons to do so; and the clerks of election shall enter the names of voters and the numbers of the ballots, in the order in which they were received, in the poll-books, in conformity with the form printed in section 7003, and, in addition, whenever a registration is required by law, place on such ballot the number corresponding with the number opposite the name of the person voting, found on the registration list; and no ballot not so numbered shall be counted; and the ballots, after being counted, shall be sealed up in a package and delivered to the clerk of the county court or corresponding officer in any city not within a county, who shall deposit them in his office, where they shall be safely preserved for twelve months; and the said officer shall not allow the same to be inspected, unless in case of contested elections, or the same become necessary to be used in evidence, and then only on the order of the proper court, or a judge thereof in vacation, under such restrictions for their safe keeping and return as the court or judge making the same may deem necessary; and at the end of twelve months, said officer shall publicly destroy the same by burning, without inspection; and no judge or clerk of an election shall disclose the names of the candidates voted for by any voter, and any judge or

(d) 140 Mo. 390; 130 Mo. 621, 630; 128 Mo. 661: 53 Mo. 58; 41 Mo. 63; 33 A. 635.

clerk violating the provisions of this section shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of one hundred dollars. (R. S. 1889, § 4672—e.)

SEC. 6996. **Four judges to be appointed—ballots counted, how.**—In all counties in this state, four judges of election shall be appointed by the county court for each election precinct in each of said counties; and there shall also be provided two ballot-boxes for said judges of election, one of which shall be numbered No. 1, and the other numbered No. 2; and it shall be the duty of said judges to select from their number two judges who shall be designated and known as receiving judges, and two who shall be designated and known as counting judges After the poll-books are signed in the manner hereinafter provided in the form of the poll-books, the ballot-box No. 1 shall be opened and examined by all the judges and clerks, and everything removed therefrom; and one of the receiving judges, first selected, shall receive the ballot of each elector, and, after pronouncing the name of such elector in an audible voice, shall pass the ballot to the other receiving judge, who shall number the same and deposit it in said ballot-box No. 1, which shall be kept securely closed while the balloting continues for one hour from the time of opening the polls. At the expiration of said hour, the receiving judges shall deliver said ballot-box No. 1 to the counting judges, who shall immediately deliver over to said receiving judges ballot-box No. 2, which ballot-box No. 2 shall be opened and examined in the presence of all the judges and clerks, and after everything is removed therefrom, shall be securely closed, and, during the next hour, said receiving judges shall receive and deposit ballots therein, in the same manner as during the first hour ballots were received and deposited in ballot-box No. 1. After the delivery of ballot-box No. 1 to the counting judges, the same shall be immediately opened by them, and the tickets shall be taken out, one at a time, by one of the counting judges, who shall read distinctly, while the ticket remains in his hand, the name or names written or printed thereon, also the office that is intended to be filled by such person voted for, and deliver the same to the other counting judge, who shall string the same on a thread or string, as provided by law. The same method shall be observed with each ticket, and the counting shall continue thus until all the ballots in the box are counted, and then the counting judges shall securely close ballot-box No. 1, and deliver the same to the receiving judges, and receive from the receiving judges ballot-box No. 2; and so on in the same manner until the polls are closed and all the ballots are

(e) 62 Mo. 422; 53 Mo. 350.

25709

counted. No person or persons shall be admitted into the room or office where such ballots are being counted, except the judges and clerks of election: *Provided,* that any political party may select a representative man who may be admitted as a witness of such counting. It shall be the duty of one of the judges to announce to the electors present the total number of votes polled at each change of the box; but the judges clerks and witnesses shall make oath that they will make no statement nor give any information of any kind as to the number of votes polled for any office or person, nor the name of any person voted for, nor any other fact tending in any way to show the state of the polls at any time previous to the closing of the polls of said election on the day of the same. (R. S. 1889, § 4673—f.)

SEC. 6997. **Qualifications of judges.**—No person shall be qualified to act as a judge or clerk of any election unless he shall be legally entitled to vote at such election, and shall moreover be able to read and write. (R. S. 1889, § 4674.)

SEC. 6998. **Poll-books shall be signed and attested.**—At the close of the polls the poll-book shall be signed by the judges and attested by the clerks, and after the names therein contained shall be counted, as provided, the number shall be set down at the foot of the poll-books, in the manner provided in the form of the poll-books. (R. S. 1889, § 4675—g.)

SEC. 6999. **Clerks shall enter votes.**—The clerk shall enter in separate columns, under the names of the persons so voted for, as hereinafter provided in the form of the poll-books, all the votes so read by the judges aforesaid. (R. S. 1889, § 4676.)

SEC. 7000. **Fraudulent ballots.**—Where two or more ballots are found placed or folded together, such ballots shall be considered as fraudulent, and shall be rejected; and if two or more ballots appear corresponding with the same number, all such ballots shall be rejected as fraudulent; and in all cases where there are two ballots corresponding to the same number, it shall be the duty of the judges of election to have the party called, and the question determined upon his evidence under oath. (R. S. 1889, § 4677.)

SEC. 7001. **Ballot fraudulent in part.**—If a ballot should be found to contain a greater number of names for any office than the number of persons required to fill such office, it shall be considered as fraudulent as to the whole of the names designated to fill such office, but no further; but no ballot shall be considered fraudulent for con-

(f) 111 Mo. 45. Two additional judges required. Section 7101.
(g) 76 Mo. 136.

taining a less number of names than are authorized to be inserted. (R. S. 1889, § 4678.)

SEC. 7002. **Result to be publicly proclaimed.**—After the examination of the ballots shall be completed, the whole number of votes for each person shall be enumerated under the inspection of the judges, and set down as directed in the form of the poll-books, and be publicly proclaimed to the persons present. (R. S. 1889, § 4679.)

SEC. 7003. **Form of poll-book—ballot-boxes not to be opened, when.**—The following shall be the form of the poll-book to be kept by the judges and clerks of election:

Poll-book of the election held at ——, in the township of ——, in the county of ——, on the —— day of ——, in the year of our Lord nineteen hundred and ——. A B, C D, E F, and X P, judges, and J K, G H, B B and T W, clerks of said election, were severally sworn, as the law directs, previous to their entering on the duties of their respective offices.

NUMBER AND NAMES OF VOTERS.

| | |
|---|---|
| No. 1..... | A B |
| No. 2..... | C D |
| No. 3..... | E F |

It is hereby certified that the number of voters at this election amounts to ——.

A B, C D, E F, X P, } Judges of election.

Attest:

J K, G H, B B, T W, } Clerks.

NAMES OF PERSONS VOTED FOR AND FOR WHAT OFFICE, CONTAINING THE NUMBER OF VOTES GIVEN EACH CANDIDATE.

| Governor. | Representatives in congress. | Representatives in state legislature. | | Etc. |
|---|---|---|---|---|
| | | Senate. | House of representatives. | |
| | | | | |

We hereby certify that A B had —— votes for governor, and C D had —— votes for governor; that E F had —— votes for representative in congress, etc.

A B, C D, E F, X P, } Judges.

J K, G H, B B, T W, } Clerks.

Nothing herein shall be so construed as to permit the judges or clerks of election to open or cause to be opened, by themselves or any other person, the boxes containing the ballots, after the commencement of voting in the morning until the close of the polls in the evening, except as provided by section 6996. Any judge or clerk violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not less than one hundred dollars nor more than three hundred dollars. (R. S. 1889, § 4680.)

25710

SEC. 7004. **Secretary of state to furnish county clerks opy of election law.**—The secretary of state shall furnish to the veral county clerks, and to the register of the city of St. Louis, least ten days before the next general election, and as often there- ter as may be necessary, a sufficient number of printed pamphlets ntaining the provisions of the constitution and laws of the state, escribing the qualifications and duties of voters and election offi- rs, and imposing penalties upon election officers and voters, and rsons attempting or offering to vote in neglect or violation of law. he county clerks and said register shall carefully preserve said mphlets in their respective offices, and at least one copy thereof all accompany each set of poll-books for use at any election, and the me shall be returned with the returns of such election; and it shall e the duty of the county clerk and such register to see that it is so re- rned. (R. S. 1889, § 4681.)

SEC. 7005. **Elections in St. Louis conducted, how.**—All lections in the city of St. Louis shall be conducted in all respects as rovided by the laws now in force regulating elections in said city. R. S. 1889, § 4682.)

SEC. 7006. **Poll-books to be transmitted to county clerk.** At the close of each election, the judges shall transmit one of the poll- ooks, by one of their clerks, to the clerk of the county court in the county in which the election was held, within two days thereafter; if the poll-books are not returned in the time provided, the clerk shall have the power to either send the sheriff or a messenger for said books; the other poll-book shall be retained in the possession of the judges of the election, open to the inspection of all persons. (R. S. 1889, § 4683.)

SEC. 7007. **County clerk and two justices to cast up votes.**—The clerk of each county court shall, within five days after the close of each election, take to his assistance two justices of the peace of his county, or two judges of the county court, and examine and cast up the votes given to each candidate, and give to those having the highest number of votes certificates of election. (R. S. 1889, § 4684—h.)

SEC. 7008. **To be done publicly.**—The clerks, in comparing the returns from the several townships, shall do it publicly, in the court-house of their counties, first giving notice of the same, by public proclamation at the court-house door. (R. S. 1889, § 4685.)

SEC. 7009. **Certificate shall include statement of what.** When any person shall have been elected a member of the house of

(h) 134 Mo. 347; 65 Mo. 480; 53 Mo. 97; 45 Mo. 340; 44 Mo. 223; 38 Mo. 541; 10 Mo. 629; 51 A. 299; 48 A. 111; 46 A. 421; 42 A. 115; 41 A. 99; 39 A. 393; 3 A. 526.

representatives, the county clerk of the county which such person was elected to represent, if the person so elected shall produce to him the tax collector's receipt for the payment of a state and county tax within one year next preceding his election, shall include in the certificate of election, which he is required by law to give such person so elected, a statement that such person has paid such tax, as appears from the receipt of the tax collector of such county; and if such tax receipt be not so produced, the clerk in said certificate shall so state. (R. S. 1889, § 4686.)

SEC. 7010. **Duty of clerks in certifying election of state senators.**—In all senatorial districts composed of two or more counties, the clerks of all the counties shall transmit to the clerk of the county first named in said district, within twelve days after such election, a certificate under their hands of the number of votes given for each candidate in each respective county; and the clerk of the county in which any candidate resides, if such candidate shall produce to him the tax collector's receipt for the payment of a state and county tax within one year next preceding such election, shall certify to the clerk of the county first named that such candidate has paid such tax as appears from the receipt of the tax collector of such county, and if such receipt be not produced, such fact shall be certified; and the clerk of the county to which such returns shall be made, after examining the same, shall certify the result to the secretary of state, and give to the person having the highest number of votes a certificate of his election under the seal of his office; and if it appear from the certificate of the clerk of the county in which such person resides that such person so elected has paid a state and county tax within one year next preceding his election, the clerk of the county to which such return is made shall further certify that such person so elected has paid such tax as appears from the certificate of the clerk of ——— county, Missouri, and give such certificate to the person so elected, and if it do not appear that such tax has been paid, that fact shall be stated. (R. S. 1889, § 4687.)

SEC. 7011. **Clerks to transmit abstract of votes to secretary of state.**—The clerks of the several courts to whom a transcript of the votes is directed shall, within two days after the time limited for the examination of the polls, deliver to the nearest post-office on the most direct route to the seat of government, addressed to the secretary of state, a fair abstract of the votes given in their respective counties, by precincts, for members of congress, governor, lieutenant-governor, state senators and representatives, judges of the supreme court, judges of the St. Louis and Kansas City courts of ap-

peals, judges of the circuit courts, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners and superintendent of public schools. Such abstracts shall be enclosed in strong envelopes, closely sealed, which shall in no case be opened until the day fixed for the counting of such votes, as hereinafter provided, and the said envelopes shall be indorsed by the clerk:

"Returns of an election held in the county of ———, on the —— day of ———, A. D. 19—, for the offices of ———," etc. (R. S. 1889, 4688, amended, Laws 1893, p. 167.)

SEC. 7012. **Special messenger may be sent.**—If there shall be a failure to receive any of the returns at the seat of government for one mail after the same is due, the secretary of state, unless the circumstances shall clearly justify a longer delay, in no case to exceed forty days from the time of such election, shall dispatch a messenger to the county not returned, with directions to bring up the abstract. (R. S. 1889, § 4689.)

SEC. 7013. **Penalty, if clerk fail to transmit, etc.**—If such failure shall happen by neglect of the clerk, he shall forfeit to the state one hundred dollars, together with the expenses of such messenger, to be recovered by civil action before any court having jurisdiction thereof. And it shall be the duty of the secretary of state to direct the prosecuting attorney of the proper county forthwith to institute such action against such delinquent clerk. (R. S. 1889, § 4690.)

SEC. 7014. **Duty of secretary of state when returns are in.**—Within fifty days after such general election, and as much sooner as all the returns shall have been made, the secretary of state, in the presence of the governor, shall proceed to open the returns and cast up the votes given for all candidates for any office, except governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners and superintendent of public schools, and shall give to the persons having the highest number of votes for members of congress, from each district, certificates of their election, under his hand, with the seal of the state affixed thereto, and shall certify to the governor the names of the candidates having received the highest number of votes for the offices of judges of the supreme court, circuit courts and St. Louis and Kansas City courts of appeals. (R. S. 1889, § 4691—i.)

SEC. 7015. **In case of tie, a special election.**—If any two or more persons have an equal number of votes for member of con-

(1) 56 Mo. 107; 53 Mo. 97.

gress, state senator, representative, judge of the supreme court, judge of the St. Louis and Kansas City courts of appeals, or any circuit court, court of common pleas, criminal or probate court, circuit attorney or assistant circuit attorney, and a higher number than any other person, the governor, in such case, shall issue his proclamation, giving notice of such fact, and that an election will be held at the places of holding elections for such officers, in which shall be mentioned the day of election, which election shall be conducted and returned agreeably to the provisions of law. (R. S. 1889, § 4692—j.)

SEC. 7016. **Governor may direct, what.**—The governor may, in special elections, if he think proper, direct in his proclamation that the returns be forwarded by messenger. (R. S. 1889, § 4693.)

SEC. 7017. **Duty of secretary of state to lay before each house list of members elected.**—Within two days after the meeting of each general assembly, the secretary of state shall lay before each house a list of the members elected thereto, agreeably to the returns in his office, which returns and lists shall show who did and who did not produce tax receipts, as provided in sections 7009 and 7010. (R. S. 1889, § 4694.)

SEC. 7018. **Returns of election of state officers to be delivered to the speaker of the house.**—After each election of governor, lieutenant-governor, secretary of state, state auditor, state treasurer, attorney-general, railroad and warehouse commissioners and superintendent of public schools, the secretary of state shall, immediately after the organization of the house of representatives, deliver to the speaker thereof the returns of the votes given for the last-named officers, who shall thereupon immediately notify the senate of the same, and that the house is ready to receive the senate in joint session to open and publish the same, whereupon the senate shall immediately repair to the hall of the house of representatives; and the speaker of the house shall, before proceeding to other business, in the presence of a majority of the members elected to each house of the general assembly so assembled in joint session, open and publish the same. In case of an alleged mistake in any return, or when more than one return has been made for any of said officers from any county or city or precinct, the two houses shall, in joint session, correct such mistake, if any, and determine which is the true and correct return by a vote of a majority of the members present, and the same shall be counted by the speaker, under the direction and control of the two houses thus assembled. The person having the highest number of

(j) 76 Mo. 136; 65 Mo. 306; 64 Mo. 89.

25712

votes for any of said offices shall be declared by the speaker of the house to have been duly elected. (R. S. 1889, § 4695.)

SEC. 7019. **Tie, how determined.**—If two or more persons, candidates for any of the offices named in the last preceding section, shall have an equal and the highest number of votes cast for the same, the general assembly shall, by joint vote, before proceeding to other business, choose one of such persons for such office; and the speaker of the house shall deposit in the office of the secretary of state a certificate declaring what person has been elected to such office. (R. S. 1889, § 4696.)

SEC. 7020. **Compensation of clerks and messengers.**—There shall be allowed to the clerks for sending or conveying the returns of any senatorial election into any other county in the district, as occasion may require, and also to any messenger who may be employed to convey the returns of any election required by law to be made to the secretary of state, at the rate of five cents per mile, going and returning. (R. S. 1889, § 4697.)

SEC. 7021. **Penalty on judge or clerk for failure to do duty.**—If any judge or clerk, after he shall have undertaken to perform the duties herein pointed out, fail so to do, he shall be fined two hundred dollars, to be recovered by civil action, in the name of the county, or by indictment, and in either case the fine shall go into the county treasury. (R. S. 1889, § 4698.)

SEC. 7022. **Penalty on messenger for failing to carry returns.**—If any person employed to carry the returns of any election fail to do so in due time, he shall be fined two hundred dollars, to be recovered and applied as in the case of a judge or clerk. (R. S. 1889, § 4699.)

SEC. 7023. **Two preceding sections construed.**—Nothing contained in the two preceding sections shall be construed to impose the said penalties on any person prevented by sickness or unavoidable accident from performing the duties assigned him by law. (R. S. 1889, § 4700.)

SEC. 7024. **Freedom from arrest on day of election.**—All judges, clerks and voters shall be free from arrest, except for felony or breach of the peace, in going to, attending on and returning from election. (R. S. 1889, § 4701.)

SEC. 7025. **Constable shall attend elections in his township.**—The constable shall attend the elections in his township, and perform such duties as are enjoined on him by law, under the direction of the judges. (R. S. 1889, § 4702.)

SEC. 7026. **Judges may punish for contempt.**—The judges of the election shall preserve good order and punish any disorderly person for contempt by fine not exceeding twenty dollars, at their discretion, and commit the offender to the jail of the county until the fine imposed be paid. (R. S. 1889, § 4703.)

SEC. 7027. **Proceedings in case of a tie in certain offices.** If there shall be a tie of the votes given for any two of the candidates, except in cases otherwise provided by law, the clerk or justices casting up the number of votes, or a majority of them, shall issue their order to the sheriff of the county where the same may occur, directing him or them to issue his proclamation for holding an election agreeably to the provisions of this chapter; and in all cases of such special election, the clerk and justices, or a majority of them, when they issue the order to the sheriff, shall, in such order, state the day on which such election shall be held, giving reasonable time for the same to be promulgated. (R. S. 1889, § 4704.)

SEC. 7028. **Vacancies, how filled.**—Whenever any vacancy, caused in any manner or by any means whatsoever, shall occur or exist in any state or county office originally filled by election by the people, other than the office of lieutenant-governor, state senator, representative, sheriff or coroner, such vacancy shall be filled by appointment by the governor; and the person so appointed shall, after having duly qualified and entered upon the discharge of his duties under such appointment, continue in such office until the first Monday in January next following the first ensuing general election—at which said general election a person shall be elected to fill the unexpired portion of such term, or for the ensuing regular term, as the case may be, and shall enter upon the discharge of the duties of such office the first Monday in January next following said election: *Provided, however,* that when the term to be filled begins or shall begin on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold such office until such other date. (R. S. 1889, § 4705—k.)

SEC. 7029. **Jurisdiction of contests—notice of contest, how served.**—The several circuit courts shall have jurisdiction in cases of contested elections for county and municipal offices, and in all cities now having or hereafter attaining three hundred thousand inhabitants, the said circuit courts shall have jurisdiction in cases of contested elections for justices of the peace, and in cases of contested elections for seats as directors in the boards having charge of the public schools and public school property, and the county courts in con-

(k) 134 Mo. 10; 74 Mo. 410; 71 Mo. 266; 64 Mo. 139.

25713

tests of township offices; but no election of any such school director, of any county, municipal or township officers, shall be contested unless notice of such contest be given to the opposite party within twenty days after the votes shall have been officially counted; the notice shall specify the grounds upon which the contestant intends to rely, and if any objection be made to the qualifications of any voters, the names of such voters and the objections shall be stated therein, and the notice shall be served fifteen days before the term of court at which the election shall be contested, by delivering a copy thereof to the contestee, or by leaving such copy at his usual place of abode, with some member of his family over the age of fifteen years; or, if neither such contestee nor his family can be found in the county, and service cannot therefore be had as aforesaid, it shall be a sufficient service of such notice for the contestant to post up a copy thereof in the office of the clerk of the court wherein the contest is to be heard. (R. S. 1889, § 4706, amended, Laws 1891, p. 106, amended, Laws 1893, p. 156, amended, Laws 1895, p. 171—l.)

Sec. 7030. **In contested case the person holding certificate may qualify and take office.**—In every case of a pending contested election, the person holding the certificate of election may give bond, qualify and take the office at the time specified by law, and exercise the duties thereof until the contest shall be decided; and if the contest be decided against him, the court or other tribunal deciding the same shall make an order for him to give up the office to the successful party in the contest, and deliver to him all books, records, papers, property and effects pertaining to the office, and may enforce such order by attachment or other proper legal process. (R. S. 1889, § 4707—m.)

Sec. 7031. **Contestee to give notice, when.**—If the party having the certificate shall desire to contest any votes given to the contesting party, he shall give to him a notice in writing, within twenty days after the notice of contest has been served upon him, specifying the names of such votes, with the objections to them. (R. S. 1889, § 4708, amended, Laws 1895, p. 172—n.)

Sec. 7032. **Parties allowed process and may take depositions.**—The parties shall be allowed process for witnesses, and either party may take depositions, as in civil cases, to be read as evidence on the trial, as is authorized in civil cases. All such depositions

(l) 134 Mo. 347, 10; 116 Mo. 259; 104 Mo. 661; 97 Mo. 311; 87 Mo. 487; 85 Mo. 620; 45 Mo. 340; 43 Mo. 290; 28 Mo. 259.

(m) 120 Mo. 593; 128 Mo. 497; 104 Mo. 668.

(n) 77 Mo. 189; 68 Mo. 162; 62 Mo. 422; 53 Mo. 97.

shall be filed before the trial is commenced, and may be read in evidence, although the witnesses reside within forty miles. (R. S. 1889, § 4709.)

SEC. 7033. **Contest to be determined in a summary manner.**—Every court authorized to determine contested elections shall hear and determine the same in a summary manner, without any formal pleading; and the contest shall be determined at the first term of such court that shall be held fifteen days after the official counting of the votes, and service of notice of contest, unless the same shall be continued by consent, or for good cause shown. (R. S. 1889, § 4710—o.)

SEC. 7034. **Costs, how adjudged.**—In all contested elections, costs may be adjudged against the unsuccessful party, and the payment thereof enforced as in civil cases. (R. S. 1889, § 4711—p.)

SEC. 7035. **Court may award a new election, when—notice of.**—In every case of contested election, if both parties consent thereto, the court authorized to try the same may award a new election, to be held at some specified day thereafter; and at least five days' notice of every such special election shall be given in the township, county, circuit or district, in such manner as the court may direct. (R. S. 1889, § 4712.)

SEC. 7036. **Person contesting election of member of legislature shall give notice.**—If any candidate of the proper county or district contest any election of any person proclaimed duly elected to the senate or house of representatives, such person shall give notice thereof, in writing, to the person whose election he contests, or leave a written notice thereof at the house where such person last resided, within forty days after the returns of the election to the clerk's office. The notice shall specify the names of the voters whose votes are contested, the ground upon which such votes are illegal, and a full statement of any other ground upon which such election is contested, and the name of the justice of the peace who will attend to the taking of the depositions, and when and where he will attend to take the same. (R. S. 1889, § 4713.)

SEC. 7037. **Depositions to be taken, by whom.**—It shall be the duty of the person whose election is contested, to select another justice of the peace to attend at the taking of the depositions at the time and place specified in the said notice; and when the two justices assemble at the time and place specified for taking depositions, they shall, unless it is otherwise agreed upon by the parties, select a third

(o) 142 Mo. 255; 66 Mo. 40; 53 Mo. 97; 57 A. 598.
(p) 54 Mo. 531.

justice of the peace to assist in taking said depositions. (R. S. 1889, § 4714.)

Sec. 7038. **Contestee failing to select a justice, contestor may select a second—their power.**—If the party whose seat is contested fail to select a justice of the peace, as provided for in the preceding section, the person contesting the same shall proceed to select another justice of the peace without delay, and the two justices of the peace so selected by the contestor shall, in such event, have full power and authority to take the depositions of all witnesses who may be brought before them to be examined. (R. S. 1889, § 4715.)

Sec. 7039. **Contestee shall give notice to adverse party, when.**—The person whose seat is contested, if he intend to contest the legality of any votes given to the candidate who contests the same, shall, within twenty days after he is notified that his election will be contested, give to the adverse party a similar notice to that specified in section 7036; and the candidate to whom the notice is given shall proceed to select a justice of the peace, in the same manner as is provided for in section 7037; and on his failing to do so, the party given the notice shall, without delay, select another justice; and the two justices so selected by the party proclaimed duly elected shall proceed to take the depositions of such witnesses as may be brought before them to be examined: *Provided, however,* that either party may, without notice, take rebutting testimony before the justices at the time and place specified for the taking of depositions. (R. S. 1889, § 4716.)

Sec. 7040. **Justice failing to attend, another shall be selected.**—If, from sickness or other cause, the justice of the peace so elected by either party should fail to attend at the time and place specified for taking depositions, said party shall, without delay, select some other justice of the peace to supply such vacancy. (R. S. 1889, § 4717.)

Sec. 7041. **Taking of depositions shall be commenced, when.**—The taking of such depositions shall be commenced within forty days from the day of election, and the said justices, or any of them, shall issue subpeonas to all persons required by either party, commanding such persons to appear and give testimony at the time and place therein mentioned. (R. S. 1889, § 4718.)

Sec. 7042. **Deposition to be certified, to whom.**—The justices shall hear and certify all testimony relative to such election to the president of the senate, if the contest is for a seat in the senate, and to the speaker of the house of representatives, if for a seat in such house. (R. S. 1889, § 4719.)

SEC. 7043. **Irrelevant testimony to be rejected.**—No testimony shall be received by the justices, senate or house of representatives, on the part of the contestor or contestee, which does not relate to the points specified in the notice; a copy of which notice, attested by the person who delivered or served the same, shall be delivered to said justices, and by them transmitted with the depositions; and no testimony except that contained in the depositions taken before the justices shall be received as evidence, either by the senate or house of representatives. (R. S. 1889, § 4720.)

SEC. 7044. **County clerk to open, count and compare ballots, etc., when.**—Either house of the general assembly, or both houses in joint session, or any court before which any contested election may be pending, or the clerk of any such court in vacation, may issue a writ to the clerk of the county court of the county in which the contested election was held, commanding him to open, count, compare with the list of voters and examine the ballots in his office, which were cast at the election in contest, and to certify the result of such count, comparison and examination, so far as the same relates to the office in contest, to the body or court from which the writ is issued. (R. S. 1889, § 4721—q.)

SEC. 7045. **Writ to be served—clerk to give notice, etc.** Such writ shall be served, without delay, on such county clerk by the sheriff of his county, and on receipt of such writ such clerk shall at once fix a day, not more than thirty days after the date of the receipt of the writ, on which he will proceed to open such ballots, and shall cause notice, in writing, of the day so fixed to be served on the contestor and contestee or their attorneys, at least five days before such day. Such notice may be served in the same manner as a writ of summons in a civil action; but in case either of the parties and his attorneys are not found in the county of such clerk, such notice may be served by posting the same on the door of the county clerk's office. (R. S. 1889, § 4722—r.)

SEC. 7046. **Clerk to open ballots—who may be present.** On the day so fixed the clerk shall proceed, in his office, to open such ballots, in the presence of the contestor and contestee and their attorneys, or such of them as demand to be present, and after swearing them not to disclose any fact discovered from such ballots, except such as may be contained in the clerk's certificate. While such ballots are

(q) 134 Mo. 347; 130 Mo. 530, 621; 128 Mo. 256; 126 Mo. 413; 116 Mo. 259; 111 Mo. 45; 97 Mo. 311.

(r) See note "q."

open and being examined, the clerk shall exclude all other persons from his office. (R. S. 1889, § 4723.)

Sec. 7047. **Ballots may be examined by whom—clerk's return—to contain what.**—The clerk shall permit the contestor and contestee and their attorneys to fully examine the ballots, and shall make return to the writ, under his hand and official seal, of all the facts which either of said parties may desire, which may appear from the ballots, affecting or relating to the election for the office in contest. (R. S. 1889, § 4724.)

Sec. 7048. **Ballots to be re-sealed.**—After the examination of the ballots is completed, the clerk shall again securely seal them up as they were, and preserve and destroy them as provided by law, in the same manner as if they had not been opened. (R. S. 1889, § 4725.)

Sec. 7049. **Clerk's certificate prima facie evidence.**—The certificate of the clerk, made under the provisions of this article, shall be *prima facie* evidence of the facts stated therein; but the persons present at the examination of the ballots may be heard as witnesses to contradict the certificates. (R. S. 1889, § 4726—s.)

Sec. 7050. **Contested election of governor and lieutenant-governor—how and where decided.**—All contested elections for governor or lieutenant-governor shall be decided by joint vote of both houses of the general assembly. The joint meeting of the two houses deciding on such elections shall be held in the hall of the house of representatives, and the president of the senate shall preside. (R. S. 1889, § 4727.)

Sec. 7051. **Contestor to present petition to general assemby.**—If any person contest the election of governor or lieutenant-governor, he shall present a petition to the general assembly, setting forth the points on which he will contest the same, and the facts which he will prove in support of these points, and shall pray for leave to produce his proof; and a vote shall be taken in the house, by yeas and nays, whether the prayer shall be granted. (R S. 1889, § 4728.)

Sec. 7052. **Joint committee appointed, when—their power.**—If the majority of the whole number of votes of both houses shall be in the affirmative, they shall appoint a joint committee to take the testimony on the part of the petitioner, and also on the part of the person whose place is contested, with the power to send for witnesses, issue warrants, under the hand of the chairman, to any judge or justice of the peace, to take the depositions of witnesses at such time and place as the warrant shall direct, which warrant shall men-

(a) 140 Mo. 390.

tion the points to which the testimony is to be taken. (R. S. 1889, § 4729.)

Sec. 7053. **Notice of time and place of taking depositions.**—Reasonable notice shall be given by the party in whose favor the deposition shall be allowed, to the opposite party, of the time and place of taking the same; and the judge or justice shall proceed in all things, in procuring the attendance of witnesses, and in taking and certifying the testimony, as is directed in the last preceding section. (R. S. 1889, § 4730.)

Sec. 7054. **Privilege of cross-examination.**—The parties shall also be allowed to attend the examination of witnesses before the committee, and to cross-examine them; but no testimony shall be taken except on points set forth in the petition. (R. S. 1889, § 4731.)

Sec. 7055. **Report of committee—day for decision to be fixed.**—The committee shall report the facts to the house, and a day shall be fixed by a joint resolution for the meeting of the two houses, to decide upon the same, in which decision the ayes and nays shall be taken by the secretary of the senate and the clerk of the house, respectively, and shall be entered upon the journals. (R. S. 1889, § 4732.)

Sec. 7056. **Supreme court shall hear and determine certain contests.**—All contested elections for judge of the supreme court, judge of the St. Louis and Kansas City courts of appeals, superintendent of public schools, secretary of state, state auditor, state treasurer and attorney-general, shall be heard and determined by the supreme court, or any three judges thereof in vacation: *Provided*, that no judge of said court, who is a contestant or contestee in such election, shall be permitted to hear and determine the same. (R. S. 1889, § 4733.)

Sec. 7057. **Petition, to be presented.**—If any person contest the election of any officer named in the preceding section, he shall present a petition to the supreme court at the first term held next after the election, or to any three judges thereof in vacation, within forty days after such election, setting forth the points on which he will contest the same and the facts which he will prove in support of such points, and shall pray for leave to produce his proof. The contestee shall be served with a copy of such petition, and a notice of the time and place of the presentation of the same, ten days before the same shall be presented, and the contestee may, upon the presentation of such petition, file his answer thereto, specifying reasons why his election should not be contested. (R. S. 1889, § 4734.)

25716

SEC. 7058. **Commissioner to take testimony.**—Upon the presentation of such petition and answer, if one be made, the supreme court, or any three judges thereof, to whom the same may be presented in vacation, shall forthwith appoint a commissioner to take the testimony on the part of the petitioner, and also on the part of the person whose place is contested, at such times and places as such court or said three judges thereof in vacation shall by order direct, which order shall specify the points and facts in regard to which the testimony is to be taken, and further specify the time when the commissioner shall make his report to the court, or to said three judges thereof in vacation. (R. S. 1889, § 4735.)

SEC. 7059. **Commissioner's power.**—The commissioner, by virtue of his authority, shall have power to administer oaths and take depositions and compel the attendance of witnesses by summons and attachment, and to require them to testify. (R. S. 1889, § 4736.)

SEC. 7060. **Commissioner shall proceed, how—parties may cross-examine.**—The commissioner shall proceed in all things in procuring the attendance of witnesses, and in taking and certifying testimony, as directed in the preceding section. The contestor and contestee shall have the right to attend the examination of the witnesses before said commissioner, and cross-examine them; but no testimony shall be taken, except on the points and as to the facts specified in the order of the court, or of the said judges thereof in vacation. (R. S. 1889, § 4737.)

SEC. 7061. **Contest for office of circuit judge.**—All contested elections for judge of the circuit court shall be heard and determined before the circuit judge of an adjoining judical circuit, whose place of residence is nearest to the residence of the contestee. (R. S. 1889, § 4738.)

SEC. 7062. **Contest for office of circuit judge—proceedings.**—If any person contests the election of judge of the circuit court, he shall, within forty days after the election, file, in the office of the clerk of the circuit court of the county in which the contestee resides, a petition, setting forth the points on which he will contest the same and the facts which he will prove in support of such points and shall pray for leave to produce his proofs. (New section.)

SEC. 7063. **Summons to be issued—returnable, when.**—The clerk of the said circuit court shall issue summons upon said petition, immediately upon the filing thereof, which shall in all respects be as near as may be, the same as an ordinary summons, returnable to the next term of the circuit court of the said county: *Provided*, that such next term shall not be within thirty days, and if the next

term of the said court is within thirty days of the filing of said petition, then it shall be returnable to the second term thereafter; the said summons shall be served by delivering a copy thereof with a copy of the petition to the contestee or by leaving the same with a member of his family over the age of fifteen years at his usual place of abode, or if the said contestee shall not be in the said county the said summons may be served by posting a copy thereof, together with a copy of the petition, in the office of the clerk of the said circuit court. (New section.)

SEC. 7064. **Contestee to answer, when—jurisdiction.**—Such contestee shall answer said petition within 30 days after the serving thereof, specifying reasons why his election should not be contested, and upon the filing of said answer, the said clerk shall immediately notify the judge of the circuit court, whose residence is nearest to the said court where the contest is filed of the filing of said petition and answer, and the said judge shall be possessed of said cause and have jurisdiction to try the same and may at once appoint a commissioner to take testimony in the same way and manner as provided for contest of state officers. Upon the hearing of said contest, either party may appeal from the judgment of the circuit court to the supreme court in the same way and manner as in ordinary civil cases. (New section.)

SEC. 7065. **Supreme court to advance appeal on docket.** Upon any appeal being filed in the supreme court, it shall be the duty of the supreme court to advance for immediate hearing and determination, and during the pendency of such appeal the contestee shall continue to discharge his duties of office as though no contest was pending. Security for cost may be required the same as in civil cases. (New section.)

SEC. 7066. **Shall be governed as in contests before supreme court.**—The provisions of sections 7057, 7058, 7059 and 7060, concerning contests and proceedings therein in the supreme court and before the judges thereof, shall be applicable to and shall govern contests for the office of circuit judge, and proceedings therein in the circuit courts, and before the judges thereof. (R. S. 1889, § 4739.)

SEC. 7067. **Certain contests in St. Louis.**—All contested elections for judge of the criminal or probate court of St. Louis city shall be heard and determined by the circuit court of that city. (R. S. 1889, § 4740.)

SEC. 7068. **Proceedings, how conducted.**—All proceedings for contesting elections, as provided for in the preceding section shall

25717

be conducted in all respects as provided for contesting elections of judges of circuit courts. (R. S. 1889, § 4741.)

Sec. 7069. **Circuit attorney or assistant circuit attorney, contests, where heard.**—If any election of any circuit attorney or assistant circuit attorney be contested, such contest shall be heard and determined by the circuit court of the county or city wherein either contestant or contestee resides. (R. S. 1889, § 4742.)

Sec. 7070. **Proceedings in such cases.**—All proceedings for contesting elections of circuit attorney, or assistant circuit attorney, shall be conducted in all respects as provided for contesting elections of judges of circuit courts. (R. S. 1889, § 4743.)

Sec. 7071. **Right of appeal.**—In all cases of contested elections the right of appeal shall exist, and appeals may be taken in the same time or manner and to the same courts as is or may be provided by law with respect to appeals in ordinary civil actions; and writs of error shall lie in such cases as in civil actions. In every such case of appeal a bond with sufficient sureties shall be given, conditioned for the payment of the costs accrued and to accrue in the cause; and a new bond shall be given when required by any court in which the cause may be pending. (R. S. 1889, § 4744—t.)

Sec. 7072. **Compensation of judges and clerks of election.**—All judges and clerks of election shall be allowed such compensation for their services in conducting elections and returning the poll-books and ballots to the county clerk's office, as the county courts of their respective counties may deem reasonable, not to exceed one dollar and fifty cents per day, to be paid out of the county treasury. (R. S. 1889, § 4745.)

Sec. 7073. **Fines, etc., how appropriated.**—All fines, penalties and forfeitures herein imposed, and which are not hereinbefore otherwise appropriated, are appropriated to the school fund of the county. (R. S. 1889, § 4746.)

Sec. 7074. **Provisions of this chapter to apply to St. Louis city, except.**—Except as otherwise provided by law, the provisions of this chapter shall be applicable to the city of St. Louis the same as to counties, and the duties imposed on officers in counties shall likewise be imposed on the corresponding officers of said city. (R. S. 1889, § 4747—u.)

Sec. 7075. **Concealing, destroying, etc., tickets, unlawful.**—It shall be unlawful for any person to steal or willfully conceal, deface, mutilate or destroy any tickets that may be furnished by any

(t) 128 Mo. 497; 45 Mo. 232.
(u) 87 Mo. 487.

organization or individual at any voting place in this state on election day, whether said election be general, special or primary: *Provided*, that nothing in this section shall be so construed as in any manner to interfere with the right of the voter to erase or cause to be erased from his ticket the name of any candidate, and substituting on the margin thereof the name of the person for whom he intends to cast his vote. (R. S. 1889, § 4748.)

SEC. 7076. **Penalty.**—Any person violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not less than twenty-five nor more than one hundred dollars. (R. S. 1889, § 4749.)

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## ARTICLE II.

BALLOTS, VOTING, NOMINATIONS, ETC.

SEC. 7077. **Ballots, printing—delivery—payment.**—All ballots cast in elections for public officers within this state shall be printed and distributed at public expense, as hereinafter provided. The printing of the ballots and of the cards of instruction for the electors in each county, and the delivery of the same to the election officers, as provided in section 7099, shall be a county charge, except where the officers to be voted for are exclusively city officers, in which case such printing and delivery shall be a city charge, the payment of which shall be provided for in the same manner as the payment of other county or city expenses. (R. S. 1889, § 4756.)

SEC. 7078. **Nomination of candidates.**—Any convention of delegates or primary election as hereinafter defined, held for the purpose of making nominations to public office, and also electors to the number hereinafter specified, may nominate candidates for public offices to be filled by election within the state. Such nomination shall be made by filing a certificate of nomination, executed with the formalities prescibed for the execution of an instrument affecting real estate. (R. S. 1889, § 4757.)

SEC. 7079. **Certificates of nomination.**—The certificate of nomination, which may consist of one or more writings, shall contain the name of the person nominated, his residence, occupation, and the office for which he is nominated, and also the name and residence of each signer. The certificate may also designate by a name the party or principle which such nominee shall represent. (R. S. 1889, § 4758.)

SEC. 7080. **Certificates to be filed, where.**—Certificates of nomination shall be filed with the secretary of state for the nomination

of candidates for offices to be filled by the electors of the entire state, or any district or division of a greater extent than one county. For all other nominations to public offices, certificates of nomination shall be filed with the clerks of the county courts of the respective counties wherein the officers are to be filled by the electors. (R. S. 1889, § 4759.)

SEC. 7081. **Convention of delegates defined.**—A convention of delegates, within the meaning of this article, is a convention of delegates of any political party which at the last general election before such convention polled as a party at least three per cent. of the entire vote cast in the state, the county or other division or district for which the nomination is made. (R. S. 1889, § 4760.)

SEC. 7082. **Primary election defined.**—A primary election within the meaning of this article is an election held within this state, county, district or subdivision thereof, as the case may be, by the members of any political party, or by the voters of some political faith, for the purpose of nominating candidates for office: *Provided*, that the said party shall have cast at least three per cent. of the entire vote cast within the state, county, district or subdivision thereof. (R. S. 1889, § 4761.)

SEC. 7083. **Certificates to be signed.**—The certificates of nomination of a candidate for office, selected by any convention of delegates as herein defined, shall be signed and executed by the presiding officer and secretary of such convention. The certificate of nomination of a candidate for office, selected by any primary election as herein defined, shall be signed and executed by the presiding officer and secretary of the political committee under whose direction it is held: *Provided*, that in case of the death or inability of the presiding officer or secretary of said political convention or political committee to perform the duties herein required, the surviving qualified officer thereof shall sign and execute the certificate of nomination, which shall be accepted as if executed by both said officers. (R. S. 1889, § 4762, amended, Laws 1891, p. 133, amended, Laws 1893, p. 153.)

SEC. 7084. **Certificate to be signed by voters, when.**—The certificate of nomination of a candidate selected otherwise than by a convention of delegates shall be signed by electors resident within the district, or political division for which the candidate is presented, to a number equal to one per cent. of the entire vote cast at the last preceding election in the state, the county or other division or district for which the nomination is made: *Provided*, that the number of signatures so required shall not exceed one thousand nor less

than fifty; *and provided further*, that said signers shall declare in said certificate they are *bona fide* supporters of the candidate sought to be nominated and have not aided and will not aid in the nomination of any other candidate for the same office. (R. S. 1889, § 4763, amended.)

SEC. 7085. **Certificates to be preserved.**—The secretary of state shall cause to be preserved in his office all certificates of nomination filed therein under the provisions of this article, and the clerk of each county court shall cause to be preserved in his office all certificates of nomination filed therein under the provisions of this article. (R. S. 1889, § 4764.)

SEC. 7086. **Certificate to contain one name, etc.**—No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall join in nominating more than one nominee for each office to be filled; and no person shall accept a nomination to nor be published as a candidate for more than one office. (R. S. 1889, § 4765.)

SEC. 7087. **Certificates to be filed, when.**—Certificates of nominations filed with the secretary of state shall be filed not more than sixty and not less than twenty days before the day fixed by law for the election of the persons in nomination. Certificates of nominations herein directed to be filed with the clerk of the county court of each county, shall be filed not more than sixty days and not less than fifteen days before election: *Provided*, that in case of any vacancy in said nomination by resignation, death or otherwise, the central committee, or a convention called for that purpose, of the party on whose ticket such vacancy may occur, may select and certify to the secretary of state, county clerk or board of election commissioners, the name or names of candidates to fill such vacancy: *Provided*, that the certificates of nomination to fill vacancy shall be filed with the secretary of state not later than fifteen days before the day fixed by law for the election of the persons in nomination, and with the board of election commissioners or county clerk not later than ten days before such election: *Provided, further*, that in case of a vacancy caused by death or physical casualty at a later date than those just herein provided, the chairman of the party committee of the county, district or state, as the case may be, is hereby empowered to fill the vacancy by the appointment of another person to be the candidate for that office, and he shall make an affidavit covering all the facts before the judge of some court of record, who shall, under his hand and the seal of the court, grant a certificate covering the facts, which said certificate shall be filed with the secretary of state, county clerk or board of election

commissioners. If with the secretary of state, he shall immediately notify the various county clerks and boards of election commissioners of the vacancy, and whenever the county clerks or boards of election commissioners are duly notified of a vacancy as defined in this proviso, it shall be their duty forthwith to have printed small pasters, suitable for covering the name or names to be stricken out, said pasters containing in plain letters the name or names to be substituted; and the said county clerks or boards of election commissioners shall see to it that these pasters are properly applied to the tickets before they are placed in the hands of the voters, if necessary by having them conveyed to the judges of election, with instructions to paste them over the name or names to be stricken out before the tickets are delivered to the voter. Should the county clerks or boards of election commissioners receive the notification herein provided for in time to do so, they shall have the proper correction made on the ticket while it is still in the hands of the printer. Should the exigency of time be so great as to require it, notice of the vacancy and of the compliance with this provision by the chairman of the political party may be conveyed to the secretary of state, county clerk or board of election commissioners by telegraphic message, to be followed by the filing of the papers, said officers shall proceed immediately upon receipt of such telegram to take action as though the papers were already filed, and county clerks and boards of election commissioners shall in a similar manner act upon a telegraphic notice from the secretary of state. Any false or corrupt use of the telegraph to mislead any officer in regard to a vacancy and substitution of a name upon a ticket to be voted for at the polls in this state shall be deemed a felony, to be punished by imprisonment in the penitentiary for a term not exceeding ten years. (R. S. 1889, § 4766, amended, Laws 1891, p. 133, amended, Laws 1893, p. 153.)

SEC. 7088. **Central committee—powers.**—That the central committee of a political party shall consist of the largest body elected for the purpose of representing and acting for the party in the interim between conventions of the party. That for the purpose of making nominations to fill vacancies on a ticket previously nominated a majority of all the members-elect of a central committee shall be necessary to take action. That a central committee shall not have the power to delegate its authority to make nominations to any person or number of persons, and that any act consequent upon any such delegation of authority shall be held to be null and void. That no central committee

shall have the power to substitute, to fill any vacancy, the name of any person who is not known to be of the same political belief and party as the person for whom he is substituted. (New section.)

SEC. 7089. **Objections to certificates of nomination—proceedings.**—All certificates of nomination which are in apparent conformity with the provisions of sections 7088 and 7089, shall be deemed to be valid unless objection thereto shall be duly made, in writing, within three days after the filing of the same. In case such objection is made notice thereof shall forthwith be mailed to all candidates who may be affected thereby, addressed to them at their respective places of residence as given in the certificate of nomination. Objections to use of party name may also be made and passed upon in the same manner as objections to certificates. The secretary of state or the county clerk, as the case may be, with whom the original certificate was filed, shall in the first instance pass upon the validity of such objection and his decision shall be final, unless an order shall be made in the matter by the supreme court, or a circuit court, or by a judge of such court in vacation, before the date for the certification of the names of nominees by the secretary of state to the county clerk, or before the time at which the county clerk is required by law to publish the names of nominees as certified to him. Such order may be made summarily upon application of any party interested, and upon such notice as the court or judge may require. The decision of the secretary of state, county clerk, or the order of the court or judge thereof in vacation, shall be binding on all county and municipal officers with whom certificates of nomination are filed. In case of a division in any party and claims by two or more factions to the same party name or title, the secretary of state or county clerk shall give the preference of name to the convention held at the time and place designated in the call of the regularly constituted party authorities, and if the other faction or factions shall present no other party name, the secretary of state or county clerk shall select a name or title and place the same on the ballot before the list of candidates of said faction. The action of the preceding regular convention of such party regularly called shall determine the action of the secretary of state, the county clerk or the court, in its decision. The secretary of state or county clerk may be compelled, by peremptory order or *mandamus* proceedings, to perform his duty in this regard: *Provided*, that in all cities having a board of election commissioners, the said board shall perform all the duties herein required of county clerks

and be governed in all respects by the provisions of section 7088 and 7089, the same as county clerks. (New section.)

SEC. 7090. **Secretary of state to certify names to county clerk, when.**—Not less than eighteen days before an election to fill any public office, the secretary of state shall certify to the clerk of the county court of each county within which any of the electors may by law vote for candidates for such office, the names and the description of each person nominated for such office, as specified in the certificates of nomination filed with the secretary of state. (R. S. 1889, § 4767.)

SEC. 7091. **Clerk to publish names.**—At least seven days before an election to fill any public office, the clerk of the county court of each county shall cause to be published in two newspapers within his county, if there be two newspapers published therein, or if there be only one newspaper published therein, then in such newspaper, the nominations to office certified to him by the secretary of state, and also those filed in his office. He shall make not less than two such publications in each of such newspapers before the election, one of which publications in each newspaper shall be upon the last day upon which such newspaper is issued before the election. If there be no newspaper published in his county, the clerk of the county court shall, at least seven days before the election, cause to be posted in his office and at some public place in each township of his county, a printed notice of the nominations to office certified to him by the secretary of state, and also those filed in his office. (R. S. 1889, § 4768.)

SEC. 7092. **List of nominations to be arranged, etc.**—The list of nominations published by the clerks of the county courts of the respective counties shall be arranged in the order and form in which they will be printed upon the ballot. (R. S. 1889, § 4769.)

SEC. 7093. **Secretary not to certify names, when, etc.**—But the secretary of state shall not certify the name of a candidate whose certificate of nomination shall have been filed in his office, who shall have notified him in writing, signed and executed with the formalities prescribed for the execution of an instrument affecting real estate to entitle it to record, that he will not accept the nomination contained in the certificate of nomination. The clerk of the county court shall not include in the publication to be made according to section 7091 the name of any candidate whose certificate of nomination shall have been filed in his office who shall have notified him in like manner that he will not accept the nomination. The names of such

candidates shall not be included in the names of the candidates to be printed in the ballots as hereinafter provided. (R. S. 1889, § 4770.)

SEC. 7094. **Constitutional amendment submitted, etc.** Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than thirty days before the election, certify the same to the clerk of each county court of the state, and the clerk of each county court shall include the same in the publication provided in section 7091. (R. S. 1889, § 4771.)

SEC. 7095. **Clerk to furnish ballots, etc.**—Except as in this article otherwise provided, it shall be the duty of the clerk of the county court of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within his county participate, and to cause to be printed in the appropriate ballot, the name of every candidate whose name has been certified to or filed with him in the manner provided for in this article. Ballots other than those printed by the respective clerks of the county courts according to the provisions of this article shall not be cast or counted in any election. (R. S. 1889, § 4772.)

SEC. 7096. **Form of ballot.**—Every ballot printed under the provisions of this article shall be headed by the name of the political party by whom the candidates whose names appear on the ballots were nominated, and each of said ballots shall contain only the names of the candidates nominated by said party. Underneath the name of each candidate shall be left a blank space large enough to contain a written name. (R. S. 1889, § 4773, amended, Laws 1891, p. 133, amended, Laws 1897, p. 107.)

SEC. 7097. **Clerk to furnish ballots when any question is submitted.**—Whenever the secretary of state has duly certified to the clerk of each county court any question to be submitted to the vote of the people, the clerk of the county court shall prepare and distribute ballots of such form as will enable the electors to vote upon the question in the manner hereinafter provided. (R. S. 1889, § 4774.)

SEC. 7098. **Number of ballots to be provided.**—The clerk of the county court of each county shall provide for each election district in his county one hundred ballots for each fifty and fraction of fifty electors registered for each political party represented by candidates in the election. If there is no registration of voters in the district, he shall provide ballots to the number of one hundred for each party for every fifty or fraction of fifty electors who voted at the last general election in the district. Said ballots shall be printed from

the same kind of paper and of the same size, so that they may not be distinguished the one from the other by the backs thereof. (R. S. 1889, § 4775, amended, Laws 1891, p. 133, amended, Laws, 1893, p. 153, amended, Laws 1897, p. 107.)

SEC. 7099. **Ballots to be delivered to judges of election, when.**—Before the opening of the polls at any election for public officers within any county, the clerk of the county court shall cause to be delivered to the judges of election of each election district which is within the county in which the election is to be held, the number of ballots printed for such district, said delivery to be made by the sheriff of the county, his deputy, or constable of the township, who shall be allowed a reasonable compensation for his services, to be provided for by the county court. (R. S. 1889, § 4776, amended, Laws 1891, p. 133, amended, Laws 1893, p. 152.)

SEC. 7100. **Ballots to be printed under direction of county court.**—The printing and distributing of all ballots and cards of instructions, and the publication of the lists of nominations to office mentioned in this article shall all be done under the direction and with the consent and approval of the county court of the county in which any such election is to be held. (New section.)

SEC. 7101. **Additional judges to be appointed—charge of ballots.**—At the same time and in the same manner as judges of election are appointed or elected, two additional judges of election for each election district in the state shall be appointed or elected; three of the judges shall be taken from the political party that polled the largest number of votes at the last preceding general election, and three of the judges from the party that polled the next largest vote. The judges of election shall designate two of their number, not of the same party, whose duty it shall be to have charge of the ballots, and to furnish them to the voters in the manner hereinafter provided. (R. S. 1889, § 4777.)

SEC. 7102. **Omission or error to be corrected, how.**—Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names or description of candidates nominated for office, or in the printing of the ballots, the circuit court of any county, or the judge thereof in vacation, or if the circuit judge is then absent from the county, a judge of the county court, may, upon application by any elector, by order, require the clerk of the county court to correct such error, or to show cause why such error should not be corrected. (R. S. 1889, § 4778.)

SEC. 7103. **Booths to be provided—number—who allowed within.**—All officers upon whom is imposed by law the duty of designating the polling places, shall provide in each place designated by them a sufficient number of places, booths or compartments, which shall be furnished with such supplies and conveniences as shall enable the voter conveniently to prepare his ballot for voting, in which compartment the electors shall mark their ballots, screened from observation, and a guard so constructed that only persons within the said rail can approach within five feet of the ballot-boxes, or the places or compartments herein provided for. The number of places or compartments shall not be less than one for every one hundred and fraction of one hundred electors who voted at the last preceding general election in the district; in cities having registration, the number shall be one for every hundred or fraction of one hundred names registered. No persons, other than electors engaged in receiving, preparing or depositing their ballots, shall be permitted to be within said rail, except by authority of the judges of election, and except as is now by law otherwise provided. The expenses of providing such places or compartments and guard-rails shall be a public charge, and shall be provided for in each county, town and city in the same manner as the other election expenses. (R. S. 1889, § 4779, amended, Laws, 1891, p. 133.)

SEC. 7104. **Ballots to be delivered to voter—to be marked, how.**—On any day of election of public officers in any election district each qualified elector shall be entitled to receive from the judges of election one ballot of each political party voted for at said election It shall be the duty of such judges of election to deliver such ballots to the elector. Before delivering any ballots to the electors the two judges of election having charge of the ballots shall write their names or initials upon the back of the ballots, with ink or indelible pencil, and no other writing shall be on the back of the ballot, except the number of the ballot voted. (R. S. 1889, § 4780, amended Laws 1891, p. 133, amended, Laws 1897, p. 107.)

SEC. 7105. **Voting—voter shall proceed, how.**—On receipt of his ballots the elector shall forthwith and without leaving the polling place retire alone to one of the places, booths or compartments provided to prepare his ballot. He shall prepare his ballot by selecting the ballot he desires to vote. He shall erase or strike out the name of any candidate he does not wish to vote for and write the name of his choice underneath. After preparing his ballot the elector shall fold the same so that the face of the ballot shall be concealed and

2572

the initials of the judges may be seen. He shall also fold the other ballots given him so that their faces are concealed and so that the initials of the judges may be seen. He shall then hand the ballot he desires to vote to the judge of election selected to take the ballots, who shall number the ballot and deposit it in the ballot-box. The ballots he rejects shall be counted by the other receiving judge, who, after satisfying himself that all given to the voter have been returned, shall place them in a separate box to be provided for that purpose: *Provided,* that any outside party shall have the right to challenge any voter whom he suspects to be an illegal voter, and the judges shall determine the right of the party challenged to vote. (R. S. 1889, § 4781, amended, Laws 1891, p. 133, amended, Laws 1893, p. 153, amended, Laws 1897, p. 107.)

SEC. 7106. **One person to occupy booth.**—Not more than one person shall be permitted to occupy any one booth at one time, and no person shall remain in or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes. (R. S. 1889, § 4782.)

SEC. 7107. **Spoiling ballot, judges to furnish another, etc.**—Any voter who shall by accident or mistake spoil his ballot, so that he cannot conveniently vote the same, may on returning said spoiled ballot to the judges of election, receive another in place thereof: *Provided,* he shall at once make out and vote said ballot. Every person who does not vote any ballot delivered to him shall, before leaving the polling place, return such ballot to the judges of election having charge of the ballots. (R. S. 1889, § 4783.)

SEC. 7108. **Illiterate voter—judge to prepare ballot, when.**—Any elector who declares under oath to the judges of election having charge of the ballot that he cannot read or write, or that by reason of physical disability he is unable to mark his ballot, may declare his choice of candidates to the judges having charge of the ballots, who, in the presence of the elector, shall prepare the ballot for voting in the manner hereinbefore provided: *Provided, however,* that the provisions of this section shall not be construed to allow any judge or judges of any election to enter a booth for the purpose of assisting any elector in preparing his ballot. Such judges after reading to the elector the contents of the ballot, shall, without leaving their respective positions, prepare such ballot as the elector may dictate. (R. S. 1889, § 4784, amended, Laws 1891, p. 133, amended, Laws 1893, p. 164.)

SEC. 7109. **Ballots to be numbered, etc.**—Every ballot shall be numbered in the order in which it shall be received. No judge of election shall deposit any ballot upon which the names or initials of the judges, as hereinbefore provided for, do not appear. (R. S. 1889, § 4785, amended, Laws 1891, p. 133.)

SEC. 7110. **Clerk to furnish printed instructions, etc.**—The clerk of the county court of each county shall cause to be printed in large type, on cards, instructions for the guidance of electors preparing their ballots. He shall furnish twelve such cards to the judges of election in each election district, at the same time and in the same manner as the printed ballots. The judges of election shall post not less than one of such cards in each place or compartment provided for the preparation of ballots, and not less than three of such cards elsewhere in and about the polling place, upon the day of election. Said cards shall be printed in large, clear type, and shall contain full instructions to the voters as to what should be done: First, to obtain ballots for voting; second, to prepare the ballots for deposit in the ballot-boxes; third, to obtain a new ballot in place of one accidentally spoiled; also a copy of sections 7111, 7112 and 7114. (R. S. 1889, § 4786.)

SEC. 7111. **Destroying certificate, etc.—penalty.**—No person shall: First, falsely make or fraudulently destroy any certificate of nomination, or any part thereof; or, second, file any certificate of nomination, knowing the same, or any part thereof, to be falsely made; or, third, suppress any certificate of nomination which has been duly filed, or any part thereof; or, fourth, forge or falsely make the offical indorsement on any ballot. Every person violating any of the provisions of this section shall be deemed guilty of a felony. (R. S. 1889, § 4787.)

SEC. 7112. **Destroying supplies of booths, etc.—penalty.** No person shall, during the election, remove or destroy any of the supplies or other conveniences placed in the booths as aforesaid, for the purpose of enabling the voter to prepare his ballot. No person shall, during an election, remove, tear down or deface the cards printed for the instruction of voters. Every person willfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor. (R. S. 1889, § 4788.)

SEC. 7113. **Officer neglecting duty—penalty.**—Every public officer, upon whom any duty is imposed by this article, who shall willfully neglect or omit to perform such duty, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by

25723

imprisonment in the county jail for a term of not less than six months, or by a fine of not less than two hundred and fifty and not more than three thousand dollars, or by both such fine and imprisonment. (R. S. 1889, § 4789.)

SEC. 7114. **Officer not to disclose vote, etc.—penalty.**—No officer of election shall disclose to any person the name of any candidate for whom any elector has voted. No officer of election shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling place, or within one hundred feet of any polling place. No person shall remove any ballot from any polling place before the closing of the polls. No person shall apply for or receive any ballot in any polling place other than that in which he is entitled to vote. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. (R. S. 1889, § 4790.)

SEC. 7115. **Failure to open polls at proper time—proceedings.**—In case of a failure of the judges of elections appointed by the court to appear at the time fixed by law for opening the polls, the voters present at any election district to the number of ten or more may proceed to elect judges to act at such poll, whereupon the constable of said township having charge of the ballots shall deliver the same to said judges, to be used at said election. (R. S. 1889, § 4791.)

SEC. 7116. **Article not to apply to certain elections.**—This article shall not apply to elections for public offices determined otherwise than by ballot, to township or village elections, to school elections, or elections of county commissioners of public schools, or elections for road overseers, or to any city election in cities of the fourth class, or city of under 3,000 inhabitants existing under any special law. (R. S. 1889, § 4792, amended, Laws 1891, p. 133, amended, Laws 1893, p. 153, amended, Laws 1895, p. 170.)

SEC. 7117. **Duties of clerks to be exercised by board of election commissioners.**—The powers and duties herein given to and imposed upon the clerks of the county courts of the several counties shall be exercised in reference to the city of St. Louis and to Kansas City, and to any other city hereafter having a registration of voters, by the board of election commissioners of such city. (R. S. 1889, § 4793—1.)

SEC. 7118. **Application of article.**—The provisions of this article as amended, shall apply to all the election precincts in this state. (Laws 1891, p. 133.)

(1) In cities of 25,000 and less than 100,000 inhabitants, see duties of registrar, art. 7, this chapter.

## ARTICLE III.

### CONSTITUTIONAL AMENDMENTS.

SEC. 7119. **Publication of, and posting notices of amendments.**—All amendments proposed to the constitution of the state of Missouri by the general assembly shall be published with the laws of the session at which they are proposed, and also in some newspaper, if such there be, in each county in the state for four consecutive weeks next preceding the general election then next ensuing, and two or more copies of such amendments, printed in great primer poster type, shall be posted at each voting place for the information of voters; such copies shall be furnished by the secretary of state to the county clerks of each county, who shall have the same duly posted at each voting place in his county on the morning of the election day on which said amendments are to be voted on. (R. S. 1889, § 4750.)

SEC. 7120. **Secretary of state to designate newspapers—how paid.**—The secretary of state shall designate in what newspaper in each county said proposed amendments shall be published, and the claim due the publisher of such newspaper for such publication and the costs of publishing the copies of the amendments hereinbefore provided for, shall be certified by the secretary of state to the state auditor, who shall draw his warrant on the state treasurer therefor, payable out of any money in the treasury not otherwise appropriated. (R. S. 1889, § 4751.)

SEC. 7121. **Amendments to be numbered.**—Whenever any general assembly shall propose more than one constitutional amendment, such amendments shall be numbered by the secretary of state in the order in which the are passed,, as "first constitutional amendment," "second constitutional amendment," and so on. (R. S. 1889, § 4752.)

SEC. 7122. **Vote to be by ballot—submitted, how—method of voting.**—The vote on a proposition to call a constitutional convention, or on the adoption of a new constitution, or on any proposed constitutional amendment or amendments, shall be taken by ballot. Such amendment shall be designated on each ballot by their respective numbers. If a proposition to call a constitutional convention is submitted, each ballot shall have printed thereon the words "Constitutional convention, yes;" "Constitutional convention, no." If

the adoption of a new constitution is submitted, each ballot shall have printed thereon the words "New constitution, yes;" "New constitution, no." If but one amendment has been proposed, each ballot shall have printed thereon the words "Constitutional amendment, yes;" "Constitutional amendment, no." But if more than one amendment has been proposed, then each ballot shall have printed thereon the words "First constitutional amendment, yes;" "First constitutional amendment, no;" "Second constitutional amendment, yes;" "Second constitutional amendment, no;" and so on, designating in numerical order each amendment. The voter shall erase, as the case may be, the words "yes" or "no," to conform the ballot to the vote he desires to cast on the proposition voted on. The secretary of state shall certify to the different county clerks, or other proper officers, the form of the ballot, which shall also state or indicate the character or nature of the proposed constitutional amendment or amendments to be voted on; which statement, indicating the character or nature of any proposed constitutional amendment, shall be printed upon the official ballot, in addition to and in connection with the form above provided. Ballots not printed or prepared as herein required shall not be counted on the proposition thereby submitted. (R. S. 1889, § 4753, amended, Laws 1895, p. 170.)

SEC. 7123. **Election conducted, how—returns certified, how.**—The election on such proposed constitutional convention, on the adoption of a new constitution, or on any constitutional amendment or amendments, shall be conducted and the returns made thereof to the several county clerks, and shall by them be certified to the secretary of state, as provided by law in cases of the election of state officers. (R. S. 1889, § 4754, amended, Laws 1895, p. 170—a.)

SEC. 7124. **Proceedings after election.**—If, upon such returns so made to the secretary of state, it is found that there is a majority of the qualified voters of the state voting for and against any one of said amendments, in favor of such amendments, the same shall be deemed and taken to have been ratified by the people, and the secretary of state shall certify the result of such vote to the governor, who shall thereupon, without unnecessary delay, issue his proclamation declaring such amendment ratified by a majority of the qualified voters of this state, and valid and binding to all intents and purposes as a part of the constitution of the state of Missouri. (R. S. 1889, § 4755.)

(a) 115 Mo. 538.

SEC. 7125. **Constitutional amendment—removal of capital—bonds, etc.**—When any proposed amendment to the constitution of the state shall be submitted to the qualified voters thereof, changing the seat of government, and providing therein for the erection of new public buildings and the donation of grounds without expense to the state, it shall be lawful for and be the duty of the city or county within which the seat of government is proposed to be located, either directly or through some person or persons in lieu thereof, to deposit with the governor such securities, bonds or obligations as he may deem sufficient to guarantee the erection of such buildings and the donation of such grounds without any expense to the state, as well as to guarantee, in addition, the faithful performance of any other provision of any such proposed amendment to the constitution. (Laws 1895, p. 96.)

SEC. 7126. *Id.* **Bonds, when and where deposited.**—Such securities, bonds or obligations shall be deposited with the governor on or before the first day of May next prior to the general election at which such proposed constitutional amendment is to be voted upon. The amount of such securities, bonds or obligations shall be the estimated cost of erecting such buildings and procuring such grounds as any proposed amendment may provide for, together with cost of carrying out any other provisions of such proposed amendment; and for the purpose of determining such cost, the governor shall take the advice of a competent architect or architects; and if the said securities are not entirely satisfactory to the governor, he shall immediately declare by public official proclamation that, in his opinion, a failure has been made to comply with the stipulated terms of removal; and if satisfactory, the governor shall proclaim the same by proclamation. (Laws 1895, p. 96.)

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## ARTICLE IV.

### PRIMARIES.

SEC. 7127. **Judges, etc., to take oath.**—The judges, clerks and tellers of any primary election held for the purpose of nominating candidates for election, or of selecting delegates to a nominating convention whereby candidates are selected for any public office, shall before entering upon their duties, take and subscribe the oath prescribed by law for judges and clerks of election. (R. S. 1889, § 4795.)

SEC. 7128. **Disqualified voter voting, etc.—penalty.**—Any person voting at any such primary election, who is not qualified to vote in the election precinct where he offers to vote at the next state, county or municipal election, or who shall vote more than once at the same or different precincts or polls on the same day in the same election, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment. (R. S. 1889, § 4796.)

SEC. 7129. **Procuring illegal vote—penalty.**—Every person who shall knowingly procure any illegal vote to be cast at such primary election shall be deemed guilty of a misdemeanor, and, upon conviction thereof, punished as provided for in section 7128. (R. S. 1889, § 4797.)

SEC. 7130. **Making fraudulent returns—penalty.**—Any judge, clerk or teller of any primary election held by any political party in this state, who shall make or return a fraudulent statement of the result of such election, shall be deemed guilty of a misdemeanor, and upon conviction, punished as hereinbefore provided. (R. S. 1889, § 4798.)

SEC. 7131. **Primaries in cities with 100,000 inhabitants.**—All primary elections hereafter held by any political party having polled at least one-fourth of the total vote cast at the next preceding general election, for the purpose of nominating candidates for public offices, or for the election of delegates to a party convention held for the purpose of nominating candidates for public offices, in cities of one hundred thousand inhabitants or over, shall be held under and subject to the following provisions. (Laws 1891, p. 136, amended, Laws 1893, p. 165.)

SEC. 7132. **Notice of election.**—The board of election commissioners in such cities, upon notification of the managing or controling committee of such political party before mentioned, shall cause a notice to be printed in at least two daily newspapers printed in the English language, at least ten days prior to the holding of such election, which notice shall state time and place of holding same, and the offices for which nominations are to be made: *Provided, however,* that the board of election commissioners shall, within five days, in the event of the failure or neglect of said managing committee to give such notice at least thirty-five days before the regular election, cause to be advertised, as above, a notice of a primary election to be held

for such political party. (Laws 1891, p. 136, amended, Laws 1893, p. 165—b.)

SEC. 7133. **Polling places—districts, etc.**—Each ward in such cities shall have two polling places, to be designated by the board of election commissioners: *Provided*, that the board of election commissioners shall divide said ward into two districts, which shall each contain as near as possible, without dividing any election precinct, an equal number of voters, and the polling places shall then be selected by him, as near as may be practicable, in the center of each district. (Laws 1891, p. 136.)

SEC. 7134. **Printing and delivering ballots.**—All ballots cast in such primary election shall be printed and delivered by the board of election commissioners to the judges and clerks of election. (Laws 1891, p. 136.)

SEC. 7135. **Number of ballots.**—The board of election commissioners shall provide for each election district one ballot for each and every voter in such district. (Laws 1891, p. 136.)

SEC. 7136. **Copies of poll-books.**—It shall be the duty of the board of election commissioners to provide copies of the poll-books for the use of the judges and clerks at such primary election, and all booths and compartments in his possession that may be necessary at such election. (Laws 1891, p. 136.)

SEC. 7137. **Ballot shall contain what.**—Every ballot printed under the provisions of sections 7131 to 7145, inclusive, shall contain the name of every candidate, also the names of each delegation grouped together upon the ballot under some caption or head-line—such caption or head-line not to contain more than three words: *Provided, however*, each candidate and each delegation shall have complied with the conditions herein provided. (Laws 1891, p. 136.)

SEC. 7138. **How other names and delegations may be placed on the ballot.**—Any number of qualified voters of a ward, but not less than twenty in number, may by petition and by depositing with the board of election commissioners the sum of fifty dollars, have placed upon the ballot a delegation selected by them; and any citizen possessing the qualifications of a voter may become a candidate at such primary election, by depositing the sum of ten dollars with the board of election commissioners for each and every ward in which he may be a candidate. (Laws 1891, p. 136.)

SEC. 7139. **Judges and clerks.**—Each delegation may submit a list of three names for each polling place in the ward, from each

(b) 76 A. 327.

2572

of which lists the board of election commissioners shall appoint two, one to act as judge, the other as clerk. (Laws 1891, p. 136, amended, Laws 1893, p. 165.)

SEC. 7140. **Pay of judges and clerks.**—No judge or clerk of such primary election shall receive for his services a greater sum than five dollars. (Laws 1891, p. 136.)

SEC. 7141. **Duties of judges and clerks.**—It shall be the duty of the judges and clerks to count the ballots at the close of the polls and certify the result, in writing, to the board of election commissioners, of the number of votes cast for each candidate and delegate; they shall also deliver to the board of election commissioners with said returns the poll-books, the ballots cast and the ballot-boxes, and said board of election commissioners shall carefully keep said books, returns and ballots until after the convention to which said delegates shall be elected is held. In case any of the judges or clerks refuse to sign the returns from any polling place in such election, then it shall be the duty of the board of election commissioners to deliver to the said convention, when organized, the poll-books, the ballots and returns used at such polling place at said election. (Laws 1891, p. 136, amended, Laws 1893, p. 165.)

SEC. 7142. **Duty of board of election commissioners.**—It shall be the duty of the board of election commissioners to furnish a certificate of election to each candidate and each delegate receiving the highest number of votes. (Laws 1891, p. 136.)

SEC. 7143. **Polls open, when.**—The polls shall be open from 1 o'clock p. m. to 8 o'clock p. m. upon the day of such election. (Laws 1891, p. 136.)

SEC. 7144. **Judges and clerks guilty of misdemeanor, when.**—Any person who shall act as judge of election without having been duly sworn shall be deemed guilty of a misdemeanor, and, upon conviction thereof, punished as provided for in section 7128. Any person who shall serve as judge or clerk at any polling place in such election, who is not a *bona fide* resident of and a registered voter in the district in which said polling place is located, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in section 7128 of this article. (Laws 1891, p. 136, amended, Laws 1893, p. 165.)

SEC. 7145. **Election expenses, how paid.**—The expense of holding such primary election shall be paid from the money deposited with the board of election commissioners; should a surplus remain in the hands of the board of election commissioners, it shall within six

months after such primary election be turned into the treasury of the school board of the city. (Laws 1891, p. 136.)

SEC. 7146. **Primary elections in cities with 300,000 inhabitants or over, etc.**—All primary elections hereafter held by any political party having polled at least one-fourth of the total vote cast at the next preceding general election for the purpose of electing candidates for public offices, or for the election of delegates to a party convention held for the purpose of nominating candidates for public offices in cities of three hundred thousand inhabitants or over, shall be held under and subject to the provisions of sections 7146 to 7161, inclusive. The board of election commissioners in such cities, upon notification of the managing or controlling committee of such political party before mentioned shall cause a notice to be published in at least one newspaper representing such political party, at least five days before the date fixed for the holding of such primary election, stating the object of the election and giving the polling places and names of the judges and clerks of such election. (Laws 1897, p. 117.)

SEC. 7147. **Who entitled to vote, etc.—penalty.**—Any person voting or offering to vote at any primary election held under the provisions of sections 7146 to 7161, inclusive, who is not known to the judges thereof to be a member of the political party holding said election, or who is unwilling to declare his affiliation therewith, or who has voted at the primary election of any opposing party held for the same purpose, or who is not qualified to vote in the election precinct at the next state, county or municipal election where he offers to vote, or who shall vote more than once at the same or different precincts or polls on the same day at the same election, shall be guilty of a misdemeanor, and on conviction, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding ninety days, or by both such fine and imprisonment. (Laws 1897, p. 117.)

SEC. 7148. **Wards divided into districts—polling places.** The board of election commissioners shall divide each ward into two districts, including about an equal number of registered voters for the purpose of such primary election, except in wards containing six thousand or more registered voters, in which event they shall have three districts, and shall locate a polling place in each district, as in their judgment may be most convenient to the largest number of voters therein. (Laws 1897, p. 117.)

SEC. 7149. **Judges, how selected.**—Each delegation may submit to the board of election commissioners a list of five names for

each designated polling place, from which lists it shall be the duty of said commissioners to select two judges and one clerk to act at the ensuing primary election: *Provided,* when there are three or more delegations not more than one judge or clerk shall be selected from any one delegation. (Laws 1897, p. 117.)

SEC. 7150. **Appointment of watchers.**—Each delegation and each candidate to be voted on at any primary election, may, on application to the board of election commissioners, have a watcher commissioned to enter the polls at each voting place, and remain there to witness such election from the opening of the polls till the end of the count. Said watcher may challenge any voter who is not qualified under the provisions of sections 7146 to 7161, inclusive, to vote at said primary election. (Laws 1897, p. 117.)

SEC. 7151. **Register of voters to be furnished.**—The board of election commissioners shall furnish to the judges and clerks in each polling place one register of the voters for each precinct of said district, and shall prepare a column in such register headed "Primary election." In said column the word "voted" shall be written opposite the name of any one who has cast his ballot. The same register shall be used by the several political parties holding primary elections the same year for the same purpose. (Laws 1897, p. 117.)

SEC. 7152. **Form and preparation of ballots.**—All ballots cast at such primary election shall be printed and delivered by the board of election commissioners, they having full power and authority to prescribe the form, subject matter and arrangement thereof, as provided by law. The necessary booths and stationery shall also be provided by said board. (Laws 1897, p. 117.)

SEC. 7153. **How delegates may be placed on ballots.**—Any number of qualified voters of a ward, not less than twenty, who will certify in writing that they are members of the political party ordering the primary election, may, by petition, and by a deposit of ten dollars for each district with the board of election commissioners, have placed upon the ballot a delegation selected by them; and any citizen possessing the qualification of a voter, who will, in writing, file a certificate with the board of election commissioners that he is a member of the party holding said election, may become a candidate at such primary election by depositing with the board of election commissioners the sum of ten dollars for each and every ward in which he may be a candidate. (Laws 1897, p. 117.)

SEC. 7154. **Polls, when open.**—The polls shall be open at one o'clock p. m. and close at eight o'clock p. m. upon each day of such election. (Laws 1897, p. 117.)

SEC. 7155. **Judges and clerks, pay of.**—No judge or clerk shall receive more than three dollars for his services. (Laws 1897, p. 117.)

SEC. 7156. **Duties of judges and clerks.**—It shall be the duty of the judges and clerks to count the ballots at the close of polls and certify the result in writing to the board of election commissioners, and in case any of the judges and clerks refuse to sign the returns the board of election commissioners' certificate of election shall give to the candidate or delegate securing the highest number of votes as shown on the face of the returns, and these certificates of election shall entitle the holder to a seat and a voice in the temporary organization of the convention. (Laws 1897, p. 117.)

SEC. 7157. **Election expenses, how paid.**—The expense of holding such primary election shall be paid from the money deposited with the board of election commissioners. Should a surplus remain, it shall be the duty of said board of election commissioners, within thirty days after such primary election, to refund said amount to the parties depositing same, or to their legal representatives, *pro rata*. (Laws 1897, p. 117.)

SEC. 7158. **Governed by general election laws, when.**—In all primary elections the general election laws not in conflict with sections 7146 to 7161, inclusive, shall control, and the board of election commissioners shall so formulate their instructions to the judges and clerks as to insure a fair election and prevent fraud. Any member of the board of election commissioners may swear judges and clerks of election, and any judge shall have power in turn to swear watchers of election. (Laws 1897, p. 117.)

SEC. 7159. **Procuring illegal vote a misdemeanor.**—Any person who shall knowingly procure any illegal vote to be cast at such primary election shall be deemed guilty of a misdemeanor, and, upon conviction thereof, punished as provided for in section 7147. (Laws 1897, p. 117.)

SEC. 7160. **Fraudulent returns a misdemeanor.**—Any judge or clerk of any primary election held by any political party under this article who shall make or return a fraudulent statement of the result of such election shall be deemed guilty of a misdemeanor, and, upon conviction, be punished as provided in section 7147. (Laws 1897, p. 117.)

25728

SEC. 7161. **Judge, clerk or watcher guilty of misdemeanor, when.**—Any person who shall act as judge, clerk or watcher of election without having been duly sworn shall be deemed guilty of a misdemeanor, and, upon conviction thereof, punished as provided for in section 7147. Any person who shall serve as judge or clerk at any polling place in such election who is not a *bona fide* resident of, and a registered voter in the district in which said polling place is located, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in section 7147. (Laws 1897, p. 117.)

SEC. 7162. **Judges of supreme or appellate courts, how nominated.**—Hereafter any judicial convention held for the purpose of nominating any judge or judges of the supreme court or of either of the courts of appeals, in this state, shall not be held at the same time and place at which any other convention is held for the nomination of other state officers in this state; and any such nomination of any such judicial officer or officers, made contrary to the provisions of this section, shall be deemed and taken to be null and void in law, and the secretary of state shall refuse to file any certificate of nomination signed and executed by the presiding officer and the secretary of such judicial convention. (New section.)

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## ARTICLE V.

### PRIMARIES IN COUNTIES WITH OVER 100,000 INHABITANTS.

SEC. 7163. **Primary elections, how ordered.**—All elections hereafter to be holden by any voluntary political association or party, in counties having over one hundred thousand inhabitants, for any delegates or managing committee, or for the nomination of candidates for public office, may be called or ordered by published notice, upon the vote of a majority of the county, city or township central or controlling committee of such voluntary political association or party of the county, city or township which may elect to accept the provisions of this article, which shall state the purpose, time, manner, conditions, together with the place or places of holding such election; also, the authority by which the call or notice is published; and three persons shall be named therein to act as judges of said election, who are to supervise or preside at such poll where such election is to be holden; and the said persons shall be legal voters of the township, precinct, ward or election district for which they are

named; said notice shall likewise declare the qualifications of the persons to vote at such election: *Provided,* that such prescribed qualifications shall not be inconsistent with those expressed in this article. (R. S. 1889, § 1, art. 24, appendix.)

SEC. 7164. **Notice, how given.**—The notice required by section 7163 of this article shall be published in some newspaper or newspapers of general circulation, printed in the district, ward, precinct, township, city or county for which the election is called, and shall be posted in at least three public places in the polling precinct of such election at least five days prior thereto. (R. S. 1889, § 2, art. 24, appendix.)

SEC. 7165. **Judges of election to be sworn—clerks.**—The persons named as judges of election in the notice required by section 7163 of this article, or any persons in their absence or refusal to serve, assuming or chosen to be such judges of the election aforesaid, shall first be sworn or affirmed by some officer authorized to administer oaths, that they are legal voters of the precinct, ward or district in which such election is to be held, that they will faithfully and correctly conduct such election, protect it against all frauds and unfairness, carefully and truly canvass all votes cast thereat, in such manner as may be required by the authority appointing the election; and if any one or all of the judges appointed to hold the election be absent or refuse to serve at the hour appointed for the election to begin, then the electors present, to the number of not less than five, possessing the qualifications of persons entitled to vote at said elections shall choose a person or persons to fill any vacancy that may exist from any of the causes aforesaid; and the judges, before proceeding with the election, shall appoint two clerks to assist them in receiving and counting the votes cast, to each of whom shall be administered, by one of the judges, a similar oath to that taken by the judges of the election; and any violation of the provisions of this section shall be deemed a misdemeanor, and shall, on conviction, subject the offender to punishment by fine of not less than fifty dollars or more than two hundred dollars, or by imprisonment in the county jail not less than one nor more than six months, or by both such fine and imprisonment. (R. S. 1889, § 3, art. 24, appendix.)

SEC. 7166. **Duties of judges.**—It shall be the duty of the judges of such election to entertain objections made by any qualified elector under said published call or notice, to any vote that may be offered, on the ground that the person offering it is not entitled to vote under the terms of said call for the said election, or that he is not

a citizen of the United States, a legal resident and voter of the election precinct, ward, township or district, or that he has received or been promised, directly or indirectly, any money, fee or reward for his vote from any candidate, or that he has voted before at that place, or some other, on that day, in the same election. And it shall be the duty of one of the judges of the election, if such objection be not withdrawn, to administer to the person so offering to vote an oath or affirmation to the general effect that he will truly testify to all matters relating to his said qualifications under said published call, his residence, citizenship of the United States, receiving or being promised, directly or indirectly, any money, fee or reward for his vote from any candidate, and whether he has voted at that or other place on that day at such election. It shall then be the duty of one of the judges of the election to interrogate the person so objected to as to all matters in particular, upon which said objection was made, and generally as to all of said qualifications. If the persons so objected to shall refuse to answer any questions, after said oath or affirmation shall have been administered, it shall be the duty of the judges to reject said vote; but if such oath be taken and such questions be answered satisfactorily and not contradicted successfully by the sworn testimony of other witnesses who may be called, it shall be the duty of the judges of the election to admit the vote sworn to be qualified according to the terms of the call and the provisions of this article, having the word "sworn" noted opposite the party's name on the poll-list; and any violation of the provisions of this section by the judges of election shall be deemed a misdemeanor, and shall, on conviction, subject the party offending to punishment as prescribed in section 7165 of this article. And any person who shall, upon taking such oath or affirmation, and under the examination herein authorized, willfully make a false statement to a matter pertinent and material in such examination, shall be deemed guilty of the crime of perjury, and, on conviction, be punished as prescribed by law. (R. S. 1889, § 4, art. 24, appendix.)

SEC. 7167. **Voting more than once, how punished.**—Any person who is not a citizen of the United States, or who is not qualified to vote in the county, township, ward or election precinct wherein the election is held at the next coming state, county, municipal election, or any person who shall vote after objection is made and sustained, as specified in section 7166, or any person who shall vote more than once at the same or different precinct or polls in the same day,

in the same election, whether such objection be made or not, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not exceeding one hundred dollars, and by imprisonment in the county jail not less than ten nor more than thirty days. (R. S. 1895, § 5, art. 24, appendix.)

SEC. 7168. **Punishment of candidates for offering bribes.** Any candidate or other person who shall offer any money, fee or reward, directly or indirectly, to any elector to influence his vote at any election held under the provisions of this article, shall be deemed guilty of a misdemeanor, and shall, on conviction, be subject to the same punishment prescribed in section 7165 of this article, and any person who shall endeavor by threat or otherwise to intimidate any elector or any judges of election, or shall interfere or disturb in any manner any election held under the provisions of this article, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one hundred dollars, and imprisonment in the county jail not less than twenty nor more than thirty days. (R. S. 1889, § 6, art. 24, appendix.)

SEC. 7169. **Proceedings to secure benefits of this article.**—Any voluntary political association or party in any county of over one hundred thousand inhabitants, that shall elect to invoke the protection and subject itself to the provisions of this article, shall, at the time of publication of notice provided for in section 7163, declare that such election therein called will be held in pursuance of and subject to the provisions of this article under the title of "primary election law;" and in the event such notice last aforesaid shall be published, and not otherwise, the provisions of this article shall be applicable and in force in respect to said election. (R. S. 1889, § 7, art. 24, appendix.)

SEC. 7170 **Expenses not to be paid by state or county.** No expense shall be incurred to the county or state in the conduct of elections under the provisions of this article. (R. S. 1889, § 8, art. 24, appendix.)

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## ARTICLE VI.

### CORRUPT PRACTICES.

SEC. 7171. **Who deemed guilty of bribery.**—The following persons shall be deemed guilty of bribery at elections and shall be punished accordingly:

25730

*First*—Every person who shall directly or indirectly, by himself, or by any other person on his behalf, give, lend or agree to give or lend, or shall offer, promise, or promise to procure or endeavor to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

*Second*—Every person who shall, directly or indirectly, by himself, or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or endeavor to procure, any office, place or employment, public or private, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of any voter having voted or refrained from voting at any election.

*Third*—Every person who shall, directly or indirectly, by himself, or any other person on his behalf, make any such gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavor to procure, the election of any person to a public office, or the vote of any voter at any election.

*Fourth*—Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procure or engage, promise, or endeavor to procure, the election of any person to a public office, or the vote of any voter at any election.

*Fifth*—Every person who shall advance or pay, or cause to be paid, any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who shall knowingly pay or cause to be paid any money, wholly or in part, expended in bribery at any election; and any person so offending shall be guilty of a felony, and shall be punished by imprisonment in the penitentiary for a term of not less than three years and not more than five years; and for every such offense he shall also forfeit the sum of $500, with costs of suit, to any person who shall sue for the same in the name of the State of Missouri, to the use of the person suing, in any circuit court in this state having jurisdiction of the person of the defendant: *Provided, always*, that the foregoing enactment shall not extend to or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses

*bona fide* incurred at or concerning any election. (Laws 1893, p. 157—a.)

SEC. 7172. **Other persons deemed guilty of bribery.**—The following persons shall also be deemed guilty of bribery at elections, and shall be punished accordingly: *First*, every voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, receive, agree or contract for any money, gift, loan or valuable consideration, office, place or employment, public or private, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election. *Second*, every person who shall, after any election, directly, or indirectly, by himself, or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election, and any person so offending shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail not less than one month and not more than one year. (Laws 1893, p. 157.)

SEC. 7173. **Candidates guilty of bribery, etc., when.**—Any candidate for a public office, or any person seeking to become the nominee of any party as such candidate, who, within ten days prior to any primary election or meeting held to select delegates to a convention to nominate a candidate for the public office which he seeks to obtain, or who within 60 days prior to the election whereat an incumbent for the office so sought by him is chosen, corruptly, by himself or by any other person, directly or indirectly, gives or provides or pays, wholly or in part, or promises to pay, wholly or in part, the expense of giving or providing any meat, drink, entertainment or provision to or for any person, for the purpose of corruptly influencing that person or any other person, to give or refrain from giving his vote at such election, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined twenty-five dollars for each offense. (Laws 1893, p. 157.)

SEC. 7174. **Use of, or threat to make use of, violence, etc., to compel or induce persons to vote—penalty.**—Every person who shall directly or indirectly, by himself, or any other person on his behalf, make use of or threaten to make use of any force, violence or restraint, or inflict or threaten to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person, in order to induce or compel such per-

(a) 144 Mo. 534.

son to vote or refrain from voting at any election, or who shall, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise of any elector, or shall thereby compel, induce or prevail upon any elector either to give or refrain from giving his vote at any election, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than one month and not more than one year. (Laws 1893, p. 157.)

SEC. 7175. **Employes to be allowed four hours—penalty, etc.**—Any person entitled to vote at any election in this state shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of four hours between the times of opening and closing the polls; and such voter shall not, because of so absenting himself, be liable to any penalty: *Provided, however,* that his employer may specify the hours during which such employe may absent himself as aforesaid. Any person or corporation who shall refuse to any employe the privilege hereby conferred, or shall discharge or threaten to discharge any employe for absenting himself from his work for the purpose of said election, or shall cause any employe, to suffer any penalty or deduction of wages because of the exercise of such privilege, or who shall directly or indirectly violate the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof be fined in any sum not exceeding five hundred dollars. (Laws 1893, p. 157, amended, Laws 1897, p. 108.)

SEC. 7176. **Corporation using threats or money, etc.—penalty.**—It shall not be lawful for any corporation organized and doing business under and by virtue of the laws of this state, to directly or indirectly, by or through any of its officers or agents, or by or through any person or persons for them, influence or attempt to influence the result of any election to be held in this state, or procure or endeavor to procure the election of any person to a public office by the use of money belonging to such corporation, or by subscribing any money to any campaign fund of any party or person, or by discharging or threatening to discharge any employe of such corporation for reason of the political opinions of such employe, or to use or offer to use any power, effort, influence or other means whatsoever, to induce or persuade any employe or other person entitled to register before or vote at any election, to vote or refrain from voting for any candidate, or on any question to be determined or at issue at any election. Any violation of the provisions of this section by a corproation shall be

deemed and held as a forfeiture of its charter or franchise, as grante or derived from the state, as for willful misuser thereof, and such co poration shall be enjoined from transacting any business in this state and such forefiture or injunction may be adjudged by any circui court of any county in which such corporation is located, in a sui instituted for that purpose, in the name of the state of Missouri, by th prosecuting attorney of any county, and in the city of St. Louis by th circuit attorney or by the attorney-general. (Laws 1893, p. 15 amended, Laws 1897, p. 108.)

SEC. 7177. **Officer of corporation threatening discharg etc., to influence employe—penalty.**—Every officer or age of any railroad or other corporation, company or association, an every individual conducting or carrying on any business in this stat and having under his control or supervision, or in his employ an servants, agents or other employes entitled to vote at any ele tion in this state, who shall either directly or indirectly, or by through any person or persons for him, discharge or offer or attemp to discharge from any employment, service or position, any such em ploye for reason of the political opinions or belief of any such em ploye, or who shall coerce or attempt to coerce, intimidate or bribe an employe, or who shall by or through any unjust, corrupt or unlawf means, procure or attempt to procure or influence any employe ent tled to register before or vote at any election, to vote or refrain fro voting for any candidate for any public office at any election, or on an question to be determined or at issue in any election held in this stat shall be deemed guilty of a felony, and on conviction thereof, shall b punished by imprisonment in the penitentiary not less than two n more than five years. (Laws 1893, p. 157, amended, Laws 1897, p. 10

SEC. 7178. **Personation of another—penalty.**—A perso shall, for all purposes of this article, be deemed guilty of the offens of personation, who, at any election held pursuant to the laws of th state applies for a ballot paper in the name of some other perso whether that name be that of a person living or dead, or of a fictitio person, or who, having voted once at any election, applies at the sam election for a ballot paper in his own name or any other name; a any person who commits the offense of personation, or who aids, abet counsels or procures the commission of that offense, shall be guilty a felony, and upon conviction thereof shall be punished by impriso ment in the penitentiary for a term of not less than two years more than five years. (Laws 1893, p. 157—b.)

(b) 137 Mo. 612.

SEC. 7179. **Amount to be expended by candidates—how determined.**—No candidate for congress or for any public office in this state, or in any county, district or municipality thereof, which office is to be filled by popular election, shall, by himself or by or through any agent or agents, committee or organization, or any person or persons whatsoever, in the aggregate pay out or expend, or promise or agree or offer to pay, contribute or expend any money or other valuable thing in order to secure or aid in securing his nomination or election, or the nomination or election of any other person or persons, or both such nomination and election, to any office to be voted for at the same election, or in aid of any party or measure, in excess of a sum to be determined upon the following basis, namely: For five thousand voters or less, one hundred dollars; for each one hundred voters over five thousand and under twenty-five thousand, two dollars; for each one hundred voters over twenty-five thousand and under fifty thousand, one dollar; and for each one hundred voters over fifty thousand, fifty cents—the number of voters to be ascertained by the total number of votes cast for all the candidates for such office at the last preceding regular election held to fill the same; and any payment, contribution or expenditure, or promise, agreement or offer to pay, contribute or expend any money or valuable thing in excess of said sum, for such objects or purposes, is hereby declared unlawful. (Laws 1893, p. 157.)

SEC. 7180. **Statement of moneys expended to be made, filed, etc.—penalty for failure.**—Every person who shall be a candidate before any caucus or convention, or at any primary election, or at any election for any state, county, city, township, district or municipal office, or for senator or representative in the general assembly of Missouri, or for senator or representative in the congress of the United States, shall, within thirty days after the election held to fill such office or place, make out and file with the officer empowered by law to issue the certificate of election to such office or place, and a duplicate thereof with the recorder of deeds for the county in which such candidate resides, a statement in writing, which statement and duplicate shall be subscribed and sworn to by such candidate before an officer authorized to administer oaths, setting forth in detail all sums of money, except all sums paid for actual traveling expenses, including hotel or lodging bills, contributed, disbursed, expended or promised by him, and to the best of his knowledge and belief, by any other persons or person in his behalf, wholly or in part in endeavoring to secure or in any way in connection with his nomination or election

to such office or place, or in connection with the election of any other persons at said election, and showing the dates when and the persons to whom and the purposes for which all such sums were paid, expended or promised. Such sstatement shall also set forth that the same is as full and explicit as affiant is able to make it. No officer authorized by law to issue commissions or certificates of election shall issue a commission or certificate of election to any such person until such statement shall have been so made, verified and filed by such persons with said officer. (Laws 1893, p. 157, amended, Laws 1895, p. 173.)

SEC. 7181. **Failure to comply with preceding section—penalty.**—Any person failing to comply with the provisions of section 7180 of this article shall be liable to a fine not exceeding one thousand dollars, to be recovered in an action brought in the name of the state by the attorney-general, or by the prosecuting attorney of the county of the candidate's residence, the amount of said fine to be fixed within the above limit by the jury, and to be paid into the school fund of said county. (Laws 1893, p. 157.)

SEC. 7182. **Statement of expenditures to be filed, when.** No person shall enter upon the duties of any election office until he shall have filed the statement and duplicate provided for in section 7180 of this article, nor shall he receive any salary or any emolument of any period prior to the filing of the same. (Laws 1893, p. 157.)

SEC. 7183. **Person receiving next highest number of votes declared elected, when.**—At any time during the term of office of any public officer elected under the laws of this state, or under the charter of any city therein, the person who received the next highest number of votes for such office at the election at which such public officer was elected, as shown by the official count, may present an application in writing, and verified by his affidavit, to the attorney-general, setting forth one or more of the following charges against such public officer, to wit: That at the election at which such public officer was elected, the total amount expended, contributed or incurred by such officer exceeded the sum allowed by section 7179 of this article for such candidate, or that votes were secured by him or his agent or agents, or with his consent or connivance, or with the consent or connivance of his agent or agents, by some committee or organization, or some political party, of which party such public officer was a nominee, or by which he was supported, or the agent or agents of some such committee or organization, by paying, contributing, offering or promising to contribute money or other valuable thing as a compensation or reward, or by some promise or influence, the giving

such vote or votes, or that votes were withheld from such applicant by reason of such pracitces by or on behalf of such officer, agent, committee or organization, or by reason of some act on behalf of such officer declared by this article to be unlawful; and further setting forth that the applicant desires said attorney-general to bring an action to have such public office declared vacant on account of said violation of the laws concerning elections. Such application shall be accompanied by a bond to the state of Missouri in the penalty of one thousand dollars, subscribed by two sureties, who shall justify as freeholders of the state, and in double the amount of such penalty, exclusive of all their debts and liabilities, and property exempt by law from levy and sale under execution—such bond to be conditioned for the payment to the state of all the taxable costs and disbursements for which it may become liable for or on account of such action. Laws 1893, p. 157—c.)

SEC. 7184. **Attorney-general, duties of.**—It shall be the duty of the attorney-general, within ten days after the receipt of such application and bond, to begin an action against such public officer, or to instruct the prosecuting attorney of the county in which such public officer resides, to bring such action within ten days after such notice, to have said office declared vacant, and for such other or further relief appropriate in an action against the usurper of any office or franchise. Such action shall be deemed to be and shall be conducted according to the rules prescribed by law for an action against the usurper of an office or franchise, and it shall be the duty of any prosecuting attorney to bring such action within ten days after the receipt of such notice from the attorney-general. (Laws 183, p. 157.)

SEC. 7185. **Attorney-general or prosecuting attorney refusing to act, suit brought by whom.**—In case the attorney-general and prosecuting attorney shall neglect or refuse to bring such action within the time limited in section 7184 of this article, it shall be lawful for the applicant to bring such action in the name of the state, but at his own expense, and by his attorney or attorneys; and in any action so brought by said applicant, no recovery for costs and disbursements shall be had against the state: *Provided,* that in any case, whether instituted by the attorney-general or the prosecuting attorney, or by the applicant in person, if the court shall, at any time pending such action, find the bond given as aforesaid inadequate in amount to cover the costs accrued or likely to accrue in the cause,

(c) 144 Mo. 534, see case State ex rel. Atty.-General vs. W. F. Town—opinion not in printed report yet.

or shall find any surety or sureties insufficient, additional bond or other sureties may be required by the court, within such time and upon such terms as the court may order; and upon failure to comply with any such order of the court, such action may be dismissed at the cost of the applicant and his sureties. (Laws 1893, p. 157.)

SEC. 7186. **Actions to have preference on docket.**—Such action shall have a preference on the docket of any court of the state in which the same shall be pending, over all other civil actions whatever. (Laws 1893, p. 157.)

SEC. 7187. **Judgment in favor of state or plaintiff, when.**—If it shall be determined in any such action that any one or more of the charges defined in section 7183 of this article, and set forth in the petition, has been sustained, judgment shall be rendered ousting and excluding such defendant from such office, and in favor of the state or plaintiff, as the case may be, subject to the provisions of the next succeeding section, and for the costs of the action. But if no one of the charges set forth in the petition in said cause be sustained, judgment shall be rendered against such applicant and his sureties on the bond or bonds for the costs of such action. (Laws 1893, p. 157.)

SEC. 7188. **Office declared vacant, when.**—In any such action, such applicant, upon his own motion or on the motion of the defendant, shall be made a party plaintiff; and in any case in which such applicant shall be a party, if judgment of ouster against the defendant shall be rendered, as provided in section 7187 of this article, said judgment shall award such office to said applicant, unless it shall be further determined in such action, upon appropriate pleading and proof by defendant, that some act has been done or committed which would have been ground in a similar action against such plaintiff had he been declared elected to such office, for a judgment of ouster against him; and if it shall be so determined at the trial, such office shall be in the judgment declared vacant, and shall thereupon be filled by appointment, or a new election as may be otherwise provided by law regarding such office. (Laws 1893, p. 157—d.)

SEC. 7189. **Persons not to be excused from answering questions, when.**—No person shall be excused from answering any question on trial of such action relating to any of the acts claimed to have been committed by any part thereto, or any of the persons, committees or organizations mentioned in section 7185 of this article, on the ground that such answer would tend to incriminate or degrade

(d) See case State ex rel. Atty.-General vs. W. F. Town—a recent decision.

such person or witness. But no such answer or answers shall be used or be evidence against such witness in any criminal action, prosecution or proceeding whatever. (Laws 1893, p. 157.)

SEC. 7190. **Who deemed a political committee.**—Every two or more persons who shall be elected, appointed, chosen or associated for the purpose, wholly or in part, of raising, collecting or disbursing money, or of controlling or directing the raising, collection or disbursement of money for election purposes, and every two or more persons who shall co-operate in the raising, collection or disbursement, or in controlling or directing the raising, collection or disbursement, of money used or to be used in furtherance of the election or to defeat the election to public office of any person or any class or number of persons, or in furtherance of the enactment or to defeat the enactment of any law or ordinance, or constitutional provision, shall be deemed a political committee within the meaning of this article. (Laws 1893, p. 157.)

SEC. 7191. **Committee to appoint treasurer—duties.**—Every political committee shall appoint and constantly maintain a treasurer, to receive, keep and disburse all sums of money which may be collected or received or disbursed by such committee, or by any of its members, for any of the purposes mentioned in section 7190 of this article, for which such committee exists or acts; and, unless such treasurer is first appointed and thereafter maintained, it shall be unlawful and a violation of this article for a political committee or any of its members to collect, receive or disburse money for any such purpose. All money collected or received or disbursed by any political committe, or by any member or members thereof, for any of the purposes mentioned in section 7190 of this article, and for which such committee exists or acts, shall be paid over and made to pass through the hands of the treasurer of such committee, and shall be disbursed by him; and it shall be unlawful and a violation of this article for any political committee or for any member or members of a political committee, to disburse or expend money for any of the objects or purposes mentioned in section 7190 of this article, and for which such committee exists or acts, until the money so disbursed or expended shall have passed through the hands of the treasurer of such political committee. (Laws 1893, p. 157.)

SEC. 7192. **Duties of treasurer.**—Every treasurer of a political committee, and every person who shall at any time act as such treasurer, shall, whenever he receives or disburses money as such treasurer, or for or on account of any of the objects or purposes men-

tioned in section 7190 of this article, immediately enter and thereafter keep, in a proper book or books to be provided and preserved by him, a full, true and detailed statement and account of each and every sum of money so received or disbursed by him, setting forth in such statement the sum so received or disbursed, as the case may be, and the date when and the person from whom received, or to whom paid, as the case may be, and the object and purpose for which such sum was received or disbursed. (Laws 1893, p. 157.)

SEC. 7193. **Statement of receipts and expenditures to be filed by treasurer.**—Every treasurer of a political committee, as defined in this article, and every person who shall act as such treasurer, shall, within thirty days after each and every election, whether state, county, city, municipal, township or district election, in or concerning or in connection with which he shall have received or disbursed any money for any of the objects or purposes mentioned in section 7190, of this article, prepare and file in the office of the recorder of deeds of the county in which such treasurer resides a full, true and detailed account and statement, subscribed and sworn to by him before an officer authorized to administer oaths, setting forth each and evey sum of money received or disbursed by him for any of the objects or purposes mentioned in section 7190 of this article, within the period beginning ninety days before such election, and ending on the day on which such statement is filed, the date of each receipt and each disbursement, the name of the person from whom received or to whom paid, and the object or purpose for which the same was received, and the object or purpose for which disbursed. Such statement shall also set forth the unpaid debts and obligations, if any, of such committee, with the nature and amount of each, and to whom owing, in detail, and if there are no unpaid debts or obligations of such committee, such statement shall state such fact. (Laws 1893, p. 157.)

SEC. 7194. **Statements and accounts to be open to inspection.**—Every officer required by law to issue certificates of election or commissions as the result of elections, shall receive and file in his office and there keep, as part of the records thereof, for four years after they are filed, all statements and accounts required by this article to be filed with him. Such statements and accounts shall, at all reasonable times, be open to public inspection. After four years succeeding the filing of such statements, they shall be destroyed by such officer, or his successor. Copies of such statements, certified by such officer, under the seal of his office, of any such statement or statements, and any copy so certified, shall be admitted in evidence in all

25735

courts, with like force and effect as the original would have if produced. (Laws 1893, p. 157.)

SEC. 7195. **Treasurer failing to file statement—penalty.** Every treasurer of a political committee as defined in this article, who shall willfully fail, neglect or refuse to make out, verify and file with the recorder of deeds the statement required by section 7193 of this article, shall be guilty of a misdemeanor, and upon a conviction shall be fined not less than fifty nor more than five hundred dollars. (Laws 1893, p. 157.)

SEC. 7196. **Failure of treasurer to keep account—mutilation of book—failure to file statement—penalty.**—Every treasurer of a political committee, and every person who shall receive any money to be applied to any of the purposes mentioned in section 7190 of this article, who shall either:

*First*—Neglect or fail to keep a correct book or books of account, setting forth all the details required to be set forth in the account and statement contemplated in sections 7192 and 7193 of this article, except that the book or books need not be subscribed or sworn to, with intent to conceal the receipt or disbursement of any such sum received or disbursed by him or by any other person, or the purpose or object for which the same was received or disbursed, or to conseal the fact that there is any unpaid debt or obligation of such treasurer or committee, or the nature or amount thereof, or to whom owing, in detail; or,

*Second*—Mutilate, deface or destroy any such book or books of account, with intent to conceal any fact disclosed by such book or books; or,

*Third*—Fail to file the statement and account contemplated by said section 7193 within five days after he shall receive notice, in writing, signed by five resident freeholders of the county in which such treasurer or political committee or person resides, requesting him to file statement and account, shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned in the county jail for not less than two or more than six months. (Laws 1893, p. 157.)

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## ARTICLE VII.

REGISTRATION IN CITIES WITH 25,000 and LESS THAN 100,000 INHABITANTS.

SEC. 7197. **Registration in cities of 25,000 and less than 100,000 inhabitants.**—There shall be a registration of all

the qualified voters in cities having a population of twenty-five thousand inhabitants and less than one hundred thousand inhabitants, whether organized under general law or special charter, which registration shall be had under the provisions of this article; and for the purpose of ascertaining or determining the population of cities within this state that may have a populaion of at least twenty-five thousand and less than one hundred thousand, the aggregate vote cast for the first candidate on each ticket voted for at the last preceding presidential election in such cities, shall be multiplied by five, and the product shall be deemed to be the number of inhabitants in such city. (R. S. 1889, § 1790, amended.)

SEC. 7198. **Who may be registered.**—Every male citizen of the United States, and every person of foreign birth who may have declared his intention to become a citizen of the United States according to law not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in this state one year next preceding the election at which he offers to vote, and during the last sixty days of that time shall have resided in the city, and during the last ten days of that time in the ward at which he offers to vote, who has not been convicted of bribery, perjury or other infamous crime, nor directly interested in any bet or wager depending upon the result of the election, nor serving at the time in the regular army or navy of the United States, shall be entitled to vote at such election for all offices, state or municipal, made elective by the people, or at any other election held in pursuance of the laws of this state; but he shall not vote elsewhere than in the election precinct where his name is registered, and whereof he is registered as a resident. (R. S. 1889, § 1791.)

SEC. 7199. **County clerk to provide registration book—oath—form of book.**—The clerk of the county court for general or special election, in cities of twenty-five thousand and less than thirty thousand inhabitants in this state,shall provide a suitable registration book for each election district in their several cities, which shall have written or printed therein the following oath: "We, the undersigned, do solemnly swear (or affirm) that we will support the constitution of the United States and of the state of Missouri; and we do further swear (or affirm) that we have not registered in any other election district, that we and each of us have given our true names and places of residence as hereto subscribed." The resgistration books and the registration lists of poll-books, as hereinafter provided to be delivered to the judges of election, shall be in the following form:

| Registration number. | Name. | No. of the ballot in the order in which it was received..... | Residence. | Peculiar marks of identification. | Voted..... | Rejected..... |
|---|---|---|---|---|---|---|
| | | | | | | |

(R. S. 1889, § 1792.)

Sec. 7200. **Registrar, appointment, election, qualifications and powers of.**—In all cities of this state which now contain or may hereafter contain twenty-five thousand inhabitants and less than one hundred thousand inhabitants, at each general election for state officers, there shall be elected, in each election district of such cities, by the qualified voters of such election district, one registrar of elections, who shall have the qualifications of an elector in his election district, and be an owner of real estate in this state, and who shall hold his office for two years and until his successor is elected and qualified. Said registrars shall have the authority to administer all oaths which may be necessary in the registration of voters. All vacancies occurring in the office of registrar of elections for any election district in such cities shall be filled by the respective city councils of such cities, and whenever any city shall, by law, for the first time come under the operations of this section, the city council of such city, shall, not less than ninety days prior to the first municipal or general election held in such city after it shall come under the operation of this section, appoint registrars of elections for each of the election districts of said cities, who shall serve until their successors are duly elected at the next regular election for that purpose and qualified. When any city shall first come under the provisions of this section, and the first election held in such city, after it shall come under its provisions, shall be a municipal election, the registrars herein provided for shall hold a special registration in such city, under the provisions of this article within forty days next preceding the tenth day prior to such municipal election. (R. S. 1889, § 1793, amended.)

SEC. 7201. **Qualifications of voters — challenges — rejected ballots.**—Any person having the qualification of a voter as prescribed in this article, and who shall take and subscribe the oath required of voters by this article, and who applies for registration at the time and in the manner prescribed by law, and any naturalized citizen who shall subscribe to a written statement under oath before the registrar that he is naturalized according to the laws of the United States and of this article, and that his naturalization papers, or evidence of his citizenship have been lost or destroyed, or that the same are not accessible to him, and shall state where he was naturalized, shall be accepted by the registering officer, and duly registered as a qualified voter: *Provided*, any person registered according to the provisions of this article, when he offers to vote, may be challenged as disqualified by any person who is an elector of this state; and it shall be the duty of the judges of election to try and determine, in a summary manner, before the close of the polls, the qualifications of any person challenged as aforesaid, and upon proof that the person so challenged is not a qualified voter, the judges of election shall reject his vote, and they shall state, opposite the name of the person on the registered list of voters whose vote is rejected, the nature of his disqualification and the names of the witnesses upon whose testimony his vote was rejected; but the vote of no person who may be challenged shall be rejected except upon the testimony of two credible witnesses; *and provided further*, that the party challenging the right of any person to vote shall swear, before the judges of election at the time of so challenging the vote, that to the best of his knowledge and belief the party (naming him) is not a qualified voter under the laws of this state, and he shall also swear to the reasons which disqualify him from voting; *and provided further*, that the ballot of such person so rejected shall be preserved and returned with the books and other ballots in a separate envelope marked *rejected ballots*, and the clerk of the county shall preserve the same in his office. (R. S. 1889, § 1794.)

SEC. 7202. **County clerks to deliver registration books to registering officers.**—The clerk of the county court shall deliver, or cause to be delivered, the registration books required by section 7199 of this article, to the various registering officers of his county, at least three days before the time set for any registration, and they shall be returned by such officers to the county clerk, together with a copy thereof, alphabetically arranged, all and each of which duly certified under their hands, within three days after the

close of each registration, and be kept by the clerk, subject to public inspection. (R. S. 1889, § 1795.)

SEC. 7203. **Registration, days of, places for and notice of registration.**—The county court of each county containing cities of twenty-five thousand and less than one hundred thousand inhabitants, shall appoint days of registration, not to exceed five in each election district of said cities, which shall be within forty days next preceding the tenth day prior to every biennial election; the county court of each of said counties shall also appoint, at least ten days before any special or municipal election held in their county, days of registration, not exceeding three, in each election district of said cities, for the purposes of such special or municipal election, at which time those who have become entitled to register at the last general registration, but who having for any cause failed or neglected to do so, may register upon compliance with the provisions of this article. All registration of voters under this articles shall be held at the place of voting established by the county courts in each election district; and the county court shall give notice of such registration and the places where the same is to be held, by publication thereof in a daily newspaper published in said city for ten days next preceding such registration. (R. S. 1889, § 1796.)

SEC. 7204. **Deputy registrars.**—Wherever there shall be more than one precinct in any election district in which registration is required to be made under this article, the registrars shall appoint one deputy registrar for each additional precinct, who shall be vested with all the powers and duties of the registrar of the district. Each deputy so appointed shall reside in the precinct for which he is appointed; shall have the qualifications of an elector therein, and be an owner of real estate in the state. (R. S. 1889, § 1797.)

SEC. 7205. **Board of revision—duties of.**—On the Friday and Saturday preceding the seventh day before each general election, the registrars of each district shall meet at the court-house in said city as a board of revision. They shall pass upon the claims of all persons asking to be registered and who shall not have been registered, and also upon all objections to parties who have been registered as qualified voters. They shall add to the list in each precinct the names of such persons as are legally entitled to registration therein, and shall strike therefrom such as have been improperly registered; but the name of no person shall be stricken from the list unless he shall have had at least two days' notice in writing of the time and place his case will be heard: *Provided,* if objections shall be made at the time the

person is registered, no notice shall be necessary, but such objection and the name of the objector shall be noted at the time of registration by the registering officer. If any person who has been duly registered removes his residence from the election district in which he is registered to another election district in the same city, not less than ten days previous to the next election following, the registration officer of the district whence he removed shall grant him a certificate of registration, and write the word *removed* opposite his name on the registration book of that district; upon the presentation of his certificate to the board of revision, he shall be entered as a registered voter in the district to which he has removed, on or before the day of election, and be entitled to vote in such district. (R. S. 1889, § 1798.)

SEC. 7206. **Hours of registration.**—The registration officers shall, in the discharge of their duties, attend at the places of registration in their respective districts on the days appointed by the county court and by this article, from the hours of eight o'clock in the forenoon until nine o'clock p. m. of each day, and shall, without delay, register all persons as voters who, having the qualifications prescribed by law, present themselves therefor and take the oath required by this article. (R. S. 1889, § 1799.)

SEC. 7207. **County clerk to deliver original registration book and copy.**—The county clerk of each county containing cities in which registration may be had under and by virtue of this article shall, on the day before the election for which any such registration was made, deliver to the judges of election appointed under and by virtue of the general law of elections, the original registration book of their respective precincts, together with a copy thereof, heretofore required to be made, and shall take the receipt of one of the judges therefor. (R. S. 1889, § 1800.)

SEC. 7208. **Duties of clerks of election—return of books.** The clerks of the election shall, at the time any person votes or offers to vote, enter the words *voted* or *rejected*, as the case may be, opposite the voter's name, on the registration books or lists furnished them, in the appropriate column; and at the close of the polls the registration book or lists shall be signed by the judges and attested by the clerks, and the names therein marked *voted* shall be counted and the number set down at the foot of the registration book or list, and any variance between that and the number of ballots counted, noted on said books; and the names therein marked *rejected*, or otherwise disposed of, shall be counted and the number set down at the foot of the registration book or list, and any variance between that and the num-

25738

ber of rejected ballots noted in like manner. The registration books shall then be returned to the county clerk in the manner now provided by law for the return of poll-books. (R. S. 1889, § 1801.)

SEC. 7209. **Pay of registration officers—expenses.**—Each registration officer, including deputies, shall receive for his services, under this article, three dollars per day for each day necessarily occupied in the discharge of his duties, and all other officers shall receive the like fees as now allowed by law for similar services. All expenses incurred under this article shall be paid out of the respective county treasuries. (R. S. 1889, § 1802.)

SEC. 7210. **Elections, how conducted.**—All elections in such city shall be conducted in all respects as provided in this article, and subject to all the provisions of the Revised Statutes, entitled "*Elections*," so far as the same do not conflict with this article. (R. S. 1889, § 1803—a.)

SEC. 7211. **Registered voters—additional lists to be furnished by county clerk.**—In case any such city shall desire one or more certified lists of the registered voters resident within their corporate limits, to be used by the judges of the election at any corporate election, the clerk of the county court is directed, on demand of the lawful authorities of such city, to make out and certify such lists, but all expenses thereof shall be paid by the said city. (R. S. 1889, § 1804.)

SEC. 7212. **Circuit courts to have supervisory control of registration.**—The circuit court of the several counties shall have a supervisory control over the registration officers appointed or elected by virtue of this article, and the clerks of the county courts, touching all matters appertaining to the registration of voters. (R. S. 1889, § 1805.)

SEC. 7213. **Special registration, day of.**—There shall be a special registration held according to the provisions of this article, commencing on the 31st day of March, 1890, in all the counties of this state containing cities of twenty-five thousand and less than thirty thousand inhabitants, for said cities. (R. S. 1889, § 1806.)

SEC. 7214. **Additional registration, etc.**—Additional registration shall be made for special elections, except elections for school purposes, but after the special registration provided for in the next preceding section shall have been made, no special election shall be invalidated because of a failure to make such registration. (R. S. 1889, § 1807.)

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(a) When this section was enacted Article I of this chapter constituted the "provisions of the Revised Statutes, entitled 'Elections.'"

SEC. 7215. **Voting precincts—duty of common council.** The common council of every city in which registration of voters may be had under and by virtue of any special charter, or under the provisions of this article, may, by ordinance, provide for two or more voting precincts in each ward of such city, and such common council may, by ordinance, make such provisions as to judges and clerks of elections and additional copies of registration lists and the use of such copies at such voting precincts, as may be necessary in the premises. (R. S. 1889, § 1808.)

SEC. 7216. **Registrar not to be a candidate.**—No registrar shall be a candidate for any office under the laws of this state at the general or special election for which registration has been made by him. (R. S. 1889, § 1809.)

SEC. 7217. **Restrictions—illegal registration—penalty.** No person shall register in any election district other than the one in which he resides at the time of registration. Any person registering under an assumed name, or name other than his own, or who shall register in more than one election district an any registration, or shall willfully and illegally procure his name to be placed upon the registration lists of voters, when not entitled thereto, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail not less than six months nor more than one year, or by both such fine and imprisonment. (R. S. 1889, § 1810.)

SEC. 7218. **Corrupt registration—refusal to register qualified voters—penalty on registrar.**—Any registrar who shall knowingly and corruptly register any person as a voter who is not entitled so to be registered, and any registrar who shall willfully and maliciously or corruptly refuse to register any person entitled to be registered as a voter, shall on conviction thereof be punished by a fine not to exceed five hundred dollars, or by imprisonment in the county jail not to exceed one year; and shall for ten years thereafter be disqualified from voting at any election held in this state, or from holding any office of honor, profit or trust under the laws of this state. (R. S. 1889, § 1811.)

SEC. 7219. **Challenge by registrar—proceedings.**—If the right of any person to register as a qualified voter be challenged, or if the registrar doubts the qualifications of any person applying for registration, such person shall file with the registrar his second written statement as to his qualifications as a voter, as prescribed by the

25739

provisions of this article, which statement shall be conclusive of the facts therein contained, and shall be returned by the registrar, with his books, to the county clerk of the county, and filed and preserved by him. (R. S. 1889, § 1812.)

SEC. 7220. **Destroying or mutilating registration book, penalty.**—Whoever shall willfully and maliciously destroy, mutilate or deface, or take by violence from any registrar, judge of election, county clerk or other proper custodian, or steal, take and carry away from its proper custodian, any book of registration or list of voters required by this article to be made or kept, shall, on conviction thereof, be punished by imprisonment in the county jail not more than twelve months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. (R. S. 1889, § 1813.)

SEC. 7221. **Justice of county court failing of duty, penalty.**—Any justice of the county court, or any other officer who shall be charged with the performance of any duties appertaining to the registration of voters, who shall willfully and corruptly fail or refuse to perform the same, shall be deemed guilty of a misdemeanor in office. (R. S. 1889, § 1814.)

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## ARTICLE VIII. "Nesbit Laws"

REGISTRATIONS AND ELECTIONS IN CITIES WITH 300,000 INHABITANTS OR OVER.

SEC. 7222. **Registration of voters.**—In all cities of this state now having or which hereafter may have three hundred thousand inhabitants or more, there shall be a registration of all the qualified voters, and said registration and the mode of conducting the elections held in such cities shall be governed and controlled as provided herein, and be subject to all the provisions of the other election laws of this state, so far as the same are not inconsistent or in conflict herewith. (New section.)

SEC. 7223. **Governor to appoint election commissioners—qualifications.**—Within thirty days after this article becomes a law, the governor, by and with the advice and consent of the senate, shall appoint for each of such cities a board of election commissioners, to be composed of three members, who shall hold their office for the term of four years, and until their successors are commissioned and qualified. One of said commissioners shall be a member of and belong to the leading party politically opposed to that to which

the governor belongs. In making the appointment of commissioners, the governor shall designate the commissioner who shall be chairman of the board of election commissioners of such city. In case of vacancy for any cause in said board, the same shall be filled by the governor for the unexpired term until the assembling of the next legislature, when the name of said commissioner shall be submitted to the senate by the governor for confirmation, as those of the other commissioners when appointed. Such commissioners shall be legal voters, residents of the state for at least five years and of such city for a like term and be of approved integrity and capacity; they shall hold no other office, and shall be ineligible to any elective or appointive office during their term of office, and shall, before entering upon the duties of their said office, take and subscribe an oath to support the constitution of the United States and of this state, and to demean themselves faithfully in office, and each to give bond to the state in the sum of ten thousand dollars with securities to be approved by the governor, conditioned for the faithful and honest performance of the duties of his said office, and the care and preservation of the property thereof. Said oath of office and bond to be filed in the office of the secretary of state. Said election commissioners shall make all necessary rules and regulations, not inconsistent with this article, with reference to the registration of voters and conduct of elections; and shall have charge of and make provisions for all elections, general, special, local, municipal, state and county and of all others of every description, to be held in such city or in any part thereof, at any time. (New section.)

SEC. 7224. **Deputy commissioners—duties of board.**—Such election commissioners shall appoint and commission one deputy election commissioner who shall hold his office during the pleasure of said commissioners, and shall be vested with all the powers and duties of the commissioners during their absence, sickness or inability to perform their duties; said deputy election commissioner shall also be the secretary of the board of election commissioners. Such commissioners shall have the right and may employ additional clerical and other assistance from time to time as may be necessary to promptly and correctly perform the duties of the office. Said deputy election commissioner and employes shall be subject to the same restrictions and take and subscribe like oaths as said commissioners, and file the same in the office of the commissioners. Said election commissioners, deputy election commissioner and judges of election and registration are hereby authorized and empowered to administer all oaths and affirmations required in the administration of the duties of their several offices, and in the affairs and business thereof. Said board of

25740

election commissioners shall perform all the duties and take the place of the present board of election commissioners of such cities immediately after this article becomes a law. The offices and boards of election commissioners as now constituted and existing in such cities to which this article applies are hereby abolished, and the commissions of such election commissioners hereby revoked, and all acts and parts of acts inconsistent with this article, insofar as they apply to the cities named herein, are hereby repealed. (New section.)

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SEC. 7225. **Office of commissioners—shall provide ballot-boxes, etc.—duties.**—The office of such board of election commissioners shall be in the city hall of such city, and shall be kept open for the transaction of the duties and business of said office during business hours. Immediately after the appointment of said commissioners and upon the opening of such office, the officers or other custodians of said property shall, upon demand by said commissioners, turn over to them all books of registration, poll-books, tally-sheets, ballot-boxes, form blanks, stationery and property of every description in their hands in any way relating to registration and elections, or connected therewith, in any manner. Said election commissioners shall purchase and provide all necessary ballot-boxes, and all books of registration, poll-books, tally-sheets, ballots, blanks and stationery of every description with printed headings and certificates and other necessary and proper equipment for the registration of voters and the conduct of such elections, and for every incidental purpose connected therewith; and shall select and appoint the places of registration and also the polling place in each precinct, and cause the same to be fitted up, warmed, lighted and cleaned, and such place or places shall be located in the most public, orderly and convenient portion thereof. (New section.)

5

SEC. 7226. **May register, re-register or transfer voters.** Said election commissioners and deputy election commissioner shall have the power and are hereby authorized to register any person or persons in said office of election commissioners, and re-register or transfer any person or persons, who may have changed their residence from one ward to another ward, or from one precinct to another in any ward, at any time, except on such day or days on which a precinct registration may be held in said city, and except such days as intervene between the completion of the registration herein provided and the next following election; a change of residence from one place in a precinct to another place or part thereof, shall not necessitate a re-registration or transfer, or deprive the registered voter of his right to vote in said

precinct. Such registration of voters shall be done in the same for and manner and in the same books as provided for the registration voters in the precincts by the judges of election sitting as a board registration in such precincts. (New section.)

SEC. 7227. **City to be divided into election districts.** It is hereby made the duty of such board of election commissioners f such cities within six months after taking effect of this article, to vide such cites into election precincts regarding ward lines and co posed of compact and contiguous territory, which shall contain nearly as practicable, four hundred actual voters; and in making su division and establishing such precincts, such commissioners sh take as a basis the poll-books of the number of votes cast at the la preceding presidential election. At least six months before each sub quent presidential election the election commissioners may revise a re-arrange the precincts and increase or decrease their number on t basis of the votes cast at the previous presidential election for pre dent, making such precincts to contain, as near as practicable, fo hundred voters, measured by the vote of such election. The precinc in each ward shall be numbered consecutively. (New section.)

SEC. 7228. **Commissioners to prepare general registr tion for next election.**—After the said commissioners are pointed and qualified, they shall prepare for a new and general reg tration of voters for the next city election or state election, as the ca may be; such registration shall be continued and revised as herein p vided. (New section.)

SEC. 7229. **Judges and clerks to be selected—qualifi tions.**—Such board of election commissioners shall, at least six days prior to the first city or state election after this article becomes law, select and choose four electors as judges of election for each p cinct in such city; they must be citizens of the United States, and titled to vote in such precinct at the next election, must be men good repute and character, be of good understanding and capab they must reside in the ward in which the precinct for which they a selected to act is situated, and not hold any office or employment u der the United States, the state of Missouri or the city in which su election is held, and not be candidates for any office at the next ens ing election; two clerks of election for each precinct shall also be lected within the same time by such commissioners, who shall posse the same qualifications as the judges aforesaid. Before entering up the duties of their offices, each judge and clerk, so appointed, sh take and subscribe to like oath as that taken and subscribed by t

25741

election commissioners, and file the same in the office of election commissioners. Said judges and clerks shall be appointed for a term ending thirty days prior to the next state election after the election at which they were appointed to serve, and shall, during said term, serve as judges and clerks at all special, local or municipal elections in such cities; where a vacancy in the office of judge or clerk shall occur from any cause, said commissioners shall make an appointment as herein provided to fill such vacancy. Two of said judges and one of said clerks of election shall belong to and be members of the party of opposite politics to the other two judges and clerks. (New section.)

SEC. 7230. **Registration days—registration books.**—Such board of registration and election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general state election, which shall be the first day of registration, and the second day of registration shall be on the Saturday following, and the third day of registration, Tuesday, three weeks before such election. A new general registration shall be made in every year thereafter in which a presidential election occurs, and just prior thereto the first day of registration in the precinct shall be on Tuesday, four weeks before such election, the second day of registration in the precinct being on Saturday following, and the third day of registration in the precinct, Tuesday, three weeks before such election. Two registry books shall be provided and furnished to each board of registration by the said election commissioners for the purpose of said registration; the headings to the books shall be so prepared that the registry shall be made alphabetically according to the surname of each person applying, but it shall be arranged so that the residence of such person shall appear in the first column. The register shall be ruled, and one name shall be written on each line, but no name shall be written between the lines. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and if there be more than one family residing in said house either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above such level being designated as the first floor, and each floor above that as the second or such other floor as it

may be. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full. Under the column "nativity," the state, county, kingdom, empire or dominion, as the fact stated by the applicant shall be. Under the column "color," the word "white" or "colored," as the fact is. Under the subdivision of the general column "term of residence," the periods, by days, months, or years, stated by the applicant in precinct, city and state. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention," the word "yes." Under the column "qualified voter," the word "yes," or "no," as the fact shall appear or be determined by the board of registry, it being, however, required of them to designate as a qualified voter any male person who, if otherwise qualified, shall not, at the time of making application, be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election. Under the column "date of application," the month, day and year when the applicant presented himself and was adjudged a qualified voter in the election precinct. Under the column "signature," in one of the registers, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is written for him. (New section.)

SEC. 7231. **Precinct board of registry—duties.** — The judges of election aforesaid shall constitute the board of registry in the precinct for which they are appointed. In the registration of voters, said board of registry shall proceed as follows: They shall open the registration office at eight o'clock a. m., and continue in session until nine o'clock p. m. on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation: You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this state; so help you God. Each of said clerks of election and one of said judges of election shall have charge of the registry books and shall make the entries therein required by this article, and one of the judges shall ask the question as to qualifications,

25742

and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said book. The name of every applicant shall be entered in such registry books, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column "no," and if qualified, an entry shall be made in the same column "yes." Unless a majority of the judges shall determine the applicant is a qualified voter he shall be entered as not qualified, subject to the applicant's right of appeal as herein provided. Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign-born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be entered in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although otherwise qualified. At the end of the day's registration, each of said judges shall sign his name at the end of the list on each page of the registration book. Any vacancy upon such board of registration on any day of registration by reason of absence, disqualification, refusal to act or otherwise, of any judge or clerk of election, shall be filled by the judge or judges present, and the same oath shall be administered by one of the judges present to such judge or clerk as provided for regular judges and clerks. The judge or clerk so appointed shall be of the same politics as the judge or clerk he succeeds. (New section.)

SEC. 7232. **Qualifications of voters.**—Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the state one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held and during the last twenty days of that time in the precinct at which he offers to vote, who

has not been convicted of bribery, perjury or other infamous crime, or of a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor any officer, soldier or marine in the regular army or navy of the United States, nor while kept at any poor-house or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, state or municipal, made elective by the people, or at other elections held in pursuance of the laws of the state, but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident. (New section.)

SEC. 7233. **Verification lists—challenges.**—The election commissioners shall prepare and furnish to the board of registration in each precinct two blank-books, to be known as "verification lists," each page to be ruled into columns, and contain pages sufficient for each street, avenue and alley in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left-hand pages of such "verification lists," arranging them according to the street, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the pages of such "verification lists," headed "registered names," according to the street number as above indicated. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon such registry is not a qualified voter, such fact shall be noted; and after the completion of such "verification lists," such board or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter, and shall believe that such complaint was only made to vex and harass such qualified voter, then such cross or checked mark shall not be put upon such lists. Said board of registration shall, before eight o'clock on the following day, return said "verification lists" to the office of such election commissioners. (New section.)

SEC. 7234. **Precinct canvassers—duties.**—The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and, upon the Wednesday and Thursday following

25743

the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place as indicated upon said "verification lists," and if they shall find that any person upon their "verification lists" does not reside at the place designated thereby, they shall make a check-mark opposite such name. If, in making any such canvass, any person shall refuse to answer questions and give the required information asked for and known to him or her, such person shall be deemed guilty of a misdemeanor, and be liable to a penalty not to exceed $50. In making such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. Three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy shall be returned to the election commissioners Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, and proceed with such canvass. Each of said clerks shall have one copy of said "verification lists." If either of said clerks shall fail to appear at the place designated by fifteen minutes after eight o'clock, on either of said days, the election commissioner shall immediately appoint a clerk, of the same politics, in place of the one absent, or failing to act. And such clerk so failing to appear, or refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and, on conviction, be punished by imprisonment for not less than one month nor more than one year. (New section.)

SEC. 7235. **Notice to be sent those whose residence cannot be located.**—Immediately upon the completion of said canvass, said canvassers, or one of them, shall sign a notice and send the same through the mail to the address given upon the registry and "verification lists" of all persons named therein against whose names they have made check-marks, indicating that they did not reside at such place as before stated, and also to the address of all persons against whose names said registry board or judge of election has placed a check-mark in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, and to show cause why his name should not be erased from such registry. Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the commissioners. A similar

notice shall also be served by one of said canvassers, either at the time said canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he be not found, at the place designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than ten o'clock Friday morning of the week of such canvass. Any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, or to leave the notice aforesaid at the place designated for such person so designated, or to check the name of any person on said "verification lists," transferred from the registry as aforesaid and not found at the place designated, or to transfer all the names from the registry as aforesaid to such "verification lists," as aforesaid, shall be a misdemeanor, punishable by imprisonment not less than one month nor more than one year. And it shall be the duty of said commissioners, when complaint is made to them, to investigate the action of such clerks or canvassers, and to cause them to be punished for such neglect of dut (New section.)

SEC. 7236. **Commissioners and clerks to revise registry, when—proceedings.**—On the Saturday following the Tuesday, three weeks preceding such election, said board of registration shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 10 o'clock a. m. until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, stating that notice was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. If any person to whom such notice has been sent shall appear before the board of registration during that session, said board of registration shall further examine him on oath, and also swear such canvassers, and hear him or them upon the question, and if, after such examintion and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes," under the column of the registry marked "erase," and shall also draw a line in ink under his name; which, in case of any registration, shall indicate that the name of such person is erased from the register, and shall

25744

not be entitled to vote unless his name be restored as herein provided. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in the case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall not appear and show cause why his name should not be erased from such register, the same shall be erased. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registration to the office of the election commissioners. If any person, already registered, shall appear before said board at such session and make oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase his name, but shall make the correction to his residence in the books of registration. (New section.)

SEC. 7237. **Voter may ask that name on registry be erased, when—appeals.**—Any voter or voters in the ward containing such precinct may make application in writing before said board of registration at the session mentioned in the next preceding section, to have any name upon such register of any precinct erased, and of which application, the person making the same shall give the person whose name he seeks to erase due notice in writing or otherwise, at least one day before the day of said session. If, upon hearing the application, the board of registration conclude to erase the name they shall so note it on the register. Such person may appear before the board of election commissioners for the purpose of re-instating his name on the register of voters, presenting from the board of registration a certificate of his rejection and briefly the reason therefor, giving the precinct and ward. (New section.)

SEC. 7238. **Judges shall sign registry—registry to be sent to commissioners—commissioners to proceed, how—lists public records.**—At the end of the last session provided for, the said board of registration and said clerk shall compare and correct the registers aforesaid, and make them correspond and agree; and

said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall return the two registers to the possession of the election commissioners; thereupon the said commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address, and arranged according to the streets, avenues or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in sufficient numbers to meet all demands, and upon application, a copy of the same shall be given to any person in such precinct. Said registers in the office of the election commissioners, shall be public records and open to public inspection. (New section.)

SEC. 7239. **General registrations shall be made, how.**— Every general registration shall be made in the same manner and in conformity with the directions herein. At every general registration, every person desiring registration, shall appear in person and make application, under oath, as in the case of the first registration herein provided. The same form and blanks and methods of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the election commissioners in every subsequent registration, as is directed herein for the first registration, and election following the same. If any special election, occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, there shall not be a general revision of the registry. (New section.)

SEC. 7240. **Registry in force between general elections.** At every election held in such cities between the general registrations above referred to, the last general registry shall be used, and for that purpose the board of registration shall meet on Tuesday, three weeks preceding such election, and on the Saturday following, and shall hold a session from 8 o'clock a. m. until 10 o'clock p. m. on each day, and names may be added to the register in the same way, upon sworn applications as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration and otherwise. At every election held in such cities between the time this article becomes a law and the next general registration provided for herein, the registry books of qualified voters in such cities at the last general city or state election, and used in said election as the registry of qualified voters of such

25745

cities, and the registry of qualified voters under section 7226 of this article, together with the registry of qualified voters, made as provided in this section, shall be the registry of qualified voters of such city used and in force for such elections. New books of registry shall be prepared and furnished as provided in section 7230 of this article by said election commissioners for the registration required to be made in every presidential year by this article; and the registry and other books no longer required, or used, shall be kept and preserved in the office of the election commissioners. (New section.)

SEC. 7241. **Challenges—appeals.**—Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered; but if the board is satisfied that such person is a qualified voter, he must be so registered; if denied the right to be registered as a qualified voter in such precinct, he may make and sign an application, in writing, and file the same with the election commissioners, to be heard and considered by the board of appeals, as in other cases provided. (New section.)

SEC. 7242. **Commissioners shall sit as board of appeals, when—proceedings.** — Said election commissioners shall, on Thursday, Friday and Saturday of the week prior to the week in which such general or presidential election is to be held, sit as a board of appeals, to hear such application and appeals as shall be made to be placed upon the registry of voters of any particular precinct, of persons who applied for registration and were refused by the board of registration, or had their names stricken from the registry by said board. Said board of appeals may also register as qualified voters, such persons as may make application, who failed to appear before the board of registration because of sickness, forgetfulness, absence from the city or other reasonable cause, at the time of precinct registration. (New section.)

SEC. 7243. **Notice of registration days, etc.—board to deliver ballot-boxes, etc.**—It shall be the duty of such election commissioners to give ten days' notice in two daily newspapers of such cities, of opposite politics, of the time and place of registration in each precinct of the city, and on the day preceding any election, have delivered the two registers of said precinct, the ballot-box, poll-books, verification lists and necessary blanks and stationery, packages of ballots and key to box, to one of said judges of election, at his residence in such precinct. (New section.)

23 SEC. 7244. **Polls to be opened and closed, when—place of absent judge or clerk, how filled—penalty for absence or detention of ballot-box, register, etc.**—The election polls shall be open at 6 o'clock in the morning and continue open until seven o'clock in the afternoon of the same day, at which time they shall be closed. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted, and returns made thereof. If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified, or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vacancy by selecting a person of the same political party as the judge or clerk absent. One of the judges shall administer to such judge or clerk the oath required of the judge or clerk originally appointed, and such appointee perform like duties and be subject to the same punishment and penalties as any other judge or clerk. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and subject to a fine of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll-book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, be imprisoned not less than three months nor more than one year, or fined not less than $200 nor more than $1,000. (New section.)

24 SEC. 7245. **Ballot-box to be kept in public view—penalty.**—Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty, and not be removed from public view from the time when shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges and shall not again be opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor if such ballot-box shall not be kept constantly in public view during the progress of the election, unless it shall be shown by a judge that he protested against such obstruction of the view of the ballot-box, and was overruled by a majority of the judges. If any obstruction shall be, prior to or during such election, interposed so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request of any voter of the precinct. (New section.)

25 SEC. 7246. **Poll-book, how kept.**—Each of the clerks of the election shall keep a poll-book which contains a column headed "num-

25746

ber," another headed "residence," and another headed "names of voters." The name and street and number of the residence of such voter shall be entered upon each of the poll-books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "number." (New section.)

SEC. 7247. **Procedure when ballot is offered by voter—in cases of challenge.**—One of the said judges of election shall receive the ballot from the voter, and shall announce his residence and name in a loud voice, and shall write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of the voter in the poll-book, in the column headed "number," and another judge shall put the vote in the ballot-box in the presence of the voter and the judges and clerks, and in plain view of the public. The judge or clerk having charge of the registry shall then, in a column prepared thereon, in the same line of the name of the voter, mark "voted," or the letter "V." If such person so registered shall be challenged as disqualified, the party challenging shall assign his reason therefor, and thereupon one of said judges shall administer to him an oath to answer questions, and he shall be questioned by said judge or judges touching such cause of challenge, and touching any other cause of his disqualification, and may also be questioned by the person challenging him in regard to his qualifications and identity, but if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. The vote of no one shall be received by said judges whose name does not appear upon the books of registration as a qualified voter. (New section.)

SEC. 7248. **Judges to be peace officers—challengers.**—Said judges of election shall have authority to keep the peace and to cause any person to be arrested for any breach of the peace or for any breach of the election laws, or for any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the law present to obey the order of such judges of election. At every registration and election, each of the political parties shall have a right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position inside the polling or registration booth, as will enable him to see each person as he offers to register or vote, and who shall be protected, in the discharge of his duty, by the judges of election. Two persons of each political party, repre-

sented on the ballot, of good character and standing, may be admitted, by the judges, into the polling place to be present during the canvass of the votes and the making of the returns. (New section.)

28 SEC. 7249. **Vote to be canvassed, when.**—As soon as the poll of an election shall be finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the election poll, proceed to canvass the votes. Such canvass shall not be adjourned or postponed until it shall be fully completed, nor until the statements herein required to be made by the judges and clerks shall be made out and signed by them. The judges of election shall have the right to station one or more police officers or other peace officers, at such entrance to the room where such canvass is begun or about to take place, to exclude noisy or disorderly persons, and to keep the peace. (New section.)

29 SEC. 7250. **Vote, how canvassed.**—The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered upon each of the poll-books, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll-list do not agree after such rejection, they shall reject all ballots not numbered, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the election commissioners; and the ballots or poll-lists agreeing or being made to agree in this way, the board shall proceed to count the votes in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in separate piles, or on separate files. Each of the judges shall examine the separate files which are on, or supposed to be alike, and exclude from such files any which may have a name or any erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same name and count them by the tens, carefully examining each name of each of said ballots. Said judge shall then pass the ten ballots aforesaid to other judges, who shall count them in the same manner, and call the names of the persons named in the ten ballots, and the offices for which they are designated, and the poll-clerks shall tally ten votes for each of such persons. When they shall have gone through such file of ballots containing the same name by tens in that way, and when the clerks shall have tallied all the votes by tens for each of said persons, they shall then take up the next pile of ballots containing the same names, and

25747

shall count them by tens in the same way, and shall call the names of the persons named in said ballots and the offices for which they are designated, and the clerks shall tally the vote by tens for each of said persons in the same manner. When the counting of each file of ballots which contain the same names shall be completed, the clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed, and when they agree upon the number, one of them shall announce it in a loud voice. The said judges shall then canvass the other kind of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the names of the persons proper to be voted for on such ballots had been omitted or erased, usually called "scratch tickets." They shall be canvassed separately by the judges, and each name called out to the clerks and the office for which it is designated, and the clerks making tally of the same. When all ballots are canvassed in this manner, the clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the number, one of them shall announce in a loud voice the number of votes received by each candidate on each of the kinds of ballots containing his name. (New section.)

SEC. 7251. **Vote on proposition canvassed, how.**—Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerks, who shall tally the same by tens, and so the second pile shall be counted, announced and tallied, and likewise the third pile; and the clerks shall announce the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. If the tally sheets and returns should contain no heading for any proposition sub-

mitted, it shall be the duty of the clerks to write into such tally-sheets and returns the headings necessary in order to keep a correct tally and to make a correct and accurate return, and it shall be the duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition, and certify the same to the election commissioners, as provided herein in other cases. (New section.)

SEC. 7252. **Statement of result of canvass made and certified, how.**—The said judges of election shall make two statements of the result of the canvass, one of which shall be written or partly written and partly printed in each of the poll-books used at such election. Each of these statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, and city in relation to which such statement shall be made, and the time of opening and closing of the polls of such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written or partly writen and partly printed in words at length; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects, which certificate and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reason therefor, in writing, and a copy thereof signed by himself shall be enclosed in an envelope, which shall then be securely sealed, and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened could be opened. And the envelope shall be directed on the outside to the election commissioners. Each set of tallies shall also be signed by the election clerks and judges of election, and shall also be enclosed in an envlope, securely sealed and signed and directed on the outside of envelope to said election commissioners. On the outside of envelope shall be endorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward. (New section.)

SEC. 7253. **Poll-books to be placed in ballot-box—to be sealed, how.**—The poll-books which contain the statement of returns shall be placed in the ballot-box, and the ballot-box shall then be locked and the key removed; whereupon said judges of election

25748

shall all write their names upon a slip of paper of sufficient length for the following purposes: Said slip of paper, after the signing of their names thereon by said judges, shall then be pasted over the key-hole of the said box and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy the signatures written thereon, and when the key shall be inserted in the key hole it will tear the paper so pasted over the key hole. Such paper shall be fastened with some adhesive material and so as not to permit the removal of such slip of paper without defacing it. (New section.)

SEC. 7254. **Disposition of ballots.**—The judges shall fold in two folds and string closely upon a string or wire, all ballots counted by them, except those marked "defective," or "rejected," unite the ends of such string or wire in a firm knot, enclose the ballots so strung in an envelope, on which shall be endorsed, in writing or print, the number of the precinct, date on which such election was held, and securely seal such envelope, so that it cannot be opened without breaking the seal, and return said ballots, together with the package containing the ballots marked "defective" or "objected" or "rejected," in such sealed package or envelope to the election commissioners. Two of said judges of opposite politics shall, immediately after signing the statement of the result of the canvass and tally sheets and the sealing of the ballot-box, go to the office of the election commissioners and deliver said ballot-box and the key thereto to said election commissioners, who shall keep the office open until all of said ballot-boxes have been received. Immediately upon receiving said ballot-boxes said commissioners shall give a receipt therefor to said judges, and shall place them properly arranged in the order of precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a vault having a double lock, and said vault shall be locked. Said election commissioners shall securely keep said ballot boxes for twelve months, not opening or inspecting them nor allowing any one else to do so, except upon order of court in case of contested election, or when it shall be necessary to produce them at the trial of any offense committed under this article. At the end of twelve months after said election, said ballots shall be destroyed: *Provided*, that if any contest of the election of any officer voted for at such election, or prosecution under this article shall be pending at the expiration of said time, the

33

said ballots shall not be destroyed until such contest or prosecution be finally determined. (New section.)

SEC. 7255. **Statement and tally-sheet to be delivered to commissioners, etc.**—Another judge shall take a statement of the votes cast into his possession, sealed up in an envelope as aforesaid, and one of the clerks shall take a tally-sheet, sealed up in an envelope as aforesaid, and the judge having possession of statement and the clerk having possession of tally-sheet, shall each, before twelve o'clock of the next day after such election, deliver the statement and tally-sheet to the said election commissioners, and take a receipt from them therefor. And it shall be the duty of the said election commissioners to receive the same, and to keep safely under lock and key until ordered to be surrendered as herein provided. (New section.)

SEC. 7256. **Disposition of by commissioners—penalty for failure to deliver to commissioners.**—The said election commissioners, upon the receipt of said ballot-box and key thereto, shall note the condition of seal or stamp on said box, and enter the fact touching the same upon a book kept by them, together with the name of the judge who returns such ballot-box; he shall thereupon open said ballot-box and remove the poll-books containing the returns of the votes cast, and note upon the book their condition, and put them in a secure place under lock and key, to which the public, in no event, shall have access. If any judge or judges or clerks taking ballots, ballot-boxes, statement, tally or poll-books, to be delivered to the election commissioners, shall fail to deliver the same to said election commissioners within three hours after the close of the canvass of the votes as aforesaid, or shall fail or refuse to comply with the provisions of this article, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than $25 nor more than $500, or imprisonment not more than six months, or by both such fine and imprisonment. (New section.)

SEC. 7257. **Abstract of votes, how made—copy to be sent to secretary of state.**—Within eight days after the close of such election such board of election commissioners shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for governor and lieutenant-governor on one sheet; all votes for other state officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of congress and for senators and representatives to the general assembly on another sheet; all votes

25749

for county officers on another sheet; all votes for city officers on another sheet; all votes for any other officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitted to a vote of the people on another sheet. It shall be the duty of such board to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or results, and a certified copy thereof, shall be treated everywhere within the state, and by all public officers, with the same force and effect as the abstract of votes now authorized by the laws of the state in such cases made and provided. (New section.)

37

SEC. 7258. **Commissioners to make out and deliver certificates of election.**—The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application. (New section.)

38

SEC. 7259. **Procedure in case fraud in returns is suspected.**—If, upon opening the various returns so made, there shall be anything to indicate that a change has been made in such returns since signing the same by the judges and clerks, or any fraud in any respect touching such returns, it shall then be the duty of the board to have all the tallies opened and examined. If there shall then be any doubts as to the genuineness of such returns for any precinct, and as to the actual vote as originally returned, and the truth respecting the same remain uncertain, it shall be the duty of said canvassers to examine any person or persons who were present at the time of the proclamation so made by the judges of election in such precinct, about which any doubt may arise, and the board shall be permitted to place such parties or witnesses under oath and examine them touching the same, and it shall be their duty to cause such parties who were present at the time of such proclamation to come before them, and a subpoena may be issued by the election commissioners compelling any such witness to come before such board and give their evidence touching the matter; and it shall be the duty of said board to declare the result of the vote in any such precinct in regard to which any question arises, in the vote, in the same manner as it was proclaimed by the judges of election after the canvass by them in such precinct. The result, so declared, shall be binding and conclusive, except in case of election contests. (New section.)

SEC. 7260. **Impersonation, etc.—penalty.**—Any person who shall impersonate an elector or other person, and register or attempt to offer to register the name of such elector or other person, or if any person shall fraudulently register or offer, or attempt to register in or under the name of any other person, or in or under any assumed or fictitious name, or in or under any name not his own, or shall register in two election precincts; or having registered in one precinct, shall attempt to register in another, or shall knowingly, by false personation or otherwise, cause or procure, or attempt to procure, the name of any qualified voter in any election precinct to be erased or stricken from any registry of voters of such precinct, made in pursuance of this article, or otherwise as in this article provided; or by force, threat, menace, intimidation, bribery, reward or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a legal right to register or to be registered, from duly exercising such right; or shall solicit, counsel, or induce by unlawful means, any officer of registration to register any person not entitled to registration in such precinct; or to register any false, assumed or fictitious name, or any name of any person, except as provided in this article, upon conviction, shall be adjudged guilty of felony and punished in the penitentiary not less than two years. (New section.)

SEC. 7261. **Impersonating an elector at the polls, how punished.**—Any person who shall falsely personate an elector, or other person, and vote, or attempt or offer to vote in or upon the name of such elector or other person; or shall vote, or attempt to vote, in or upon the name of any other person, living or dead, or in or upon any assumed or fictitious name, or in or upon any name not his own; or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law; or shall vote, or attempt or offer to vote in any election precinct without having a lawful right to vote therein; or vote more than once, or vote in more than one election precinct; or having voted once, shall vote, or attempt to vote again; or shall knowingly, willfully or fraudulently do any unlawful act to secure a right or opportunity to vote for himself or for any other person to vote; or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly, influence or attempt to influence any elector in giving his vote; or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage; or by

25750

any such means induce, or attempt to induce, any such voter to exercise any such right, shall, upon conviction, be guilty of a felony and punished for every such offense by imprisonment in the penitentiary not less than two years. (New section.)

SEC. 7262. **Officer of election guilty of fraud—penalty.** Every election commissioner, deputy election commissioner, judge of election, clerk, canvasser or other officer, authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall make any false canvass of such votes; or shall make, sign, publish or deliver any false return of such election, or any false certificate or statement of the result of such election, or who shall deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody, shall, on conviction thereof, be adjudged guilty of a felony, and be punished by imprisonment in the penitentiary not less than two years. (New section.)

SEC. 7263. **Tampering with ballots—judge altering ballots—penalty.**—If any person other than a judge of election shall at any such election knowingly or willfully put or cause to put any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes; or if any judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced; or shall knowingly, willfully or fraudulently put any ballot or other paper having the semblance thereof or cause or permit any ballot or other paper having the semblance thereof to be put in any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry, as herein provided, or who shall be entitled to vote under this article; or if any such judge of election or other officer or person, shall, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; or shall remove any ballot or semblance thereof from, or add any ballot or semblance thereof to, the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed; every such person shall, upon conviction, be adjudged guilty of a felony, and punished by imprisonment in the penitentiary not less than two years. (New section.)

SEC. 7264. **Breach of the peace—penalty.**—If, at any registration of voters, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence whereby any such registration, revision, election or canvass shall be impeded or hindered; or whereby the lawful proceedings of any judge of election, or board of registration, or clerk or other officer of such election or challenger, or person designated to be present at the canvass of any ballots, as herein provided, or interfered with; every such person shall, upon conviction, be adjudged guilty of a misdemeanor, and punished by imprisonment not less than thirty days nor more than one year. (New section.)

SEC. 7265. **Electioneering by election officer—penalty.** It shall be unlawful for any judge of election, clerk or person designated as provided in this article, or any person or persons within the polling place, to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment not less than ten or more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars. (New section.)

SEC. 7266. **Commissioners to aid in prosecuting violations of this article.**—It shall be the duty of such election commissioners to aid in the prosecution of all crimes and offenses against this article, and they shall keep a book in which shall be entered all complaints against persons claimed to be guilty of the violation of this or any law of the state concerning registration and election, and when, in the judgment of such election commissioners such offense has probably been committed, it shall be their duty to cause a prosecution to be instituted against such person. (New section.)

SEC. 7267. **Compensation of commissioners, judges and clerks—expenses paid, how.**—In all cities not within counties such election commissioners, deputy election commissioners, judges and clerks of election and registration and clerks and assistants employed by the board of election commissioners shall be paid by the city. The members of said boards of election commissioners shall each receive a salary of $2,500 a year, and deputy election commissioner a salary of $2,000 a year, all payable monthly. The assistants and clerks employed by the election commissioners shall each receive a salary of $4.00 per day for the time actually employed, payable monthly. All office and other expenses incurred by said board of election commissioners, and all office and other expenses and all

25751

costs and expenses of registration and election in such cities shall be paid out of the city treasury. All printing, binding, books, stationery, etc., shall be paid for in the same manner and contracted for by the board of election commissioners. (New section.)

SEC. 7268. **Majority may act for board.**—The act of a majority of such board of election commissioners shall in all cases arising under this article be considered as the act of said board of election commissioners. (New section.)

SEC. 7269. **Board to audit accounts.**—Said board of election commissioners shall audit all the claims of the judges of election and of registration and all other claims, expenses and accounts under this article, and shall draw a warrant therefor upon the proper officer. (New section.)

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## ARTICLE IX. Law of 1895.

REGISTRATION AND ELECTIONS IN CITIES WITH 100,000 INHABITANTS OR OVER.

SEC. 7270. **Registration provided for.**—In all cities of this state now having, or which hereafter may have, one hundred thousand or more inhabitants, there shall be a registration of all qualified voters, and the registration of voters and the conduct of elections held in such cities shall be governed by the provisions of this article. (Laws 1895, p. 5, Extra Session.)

SEC. 7271. **Board of election commissioners created—how and by whom appointed—vacancies, how filled—duties of governor and mayors—qualifications and duties of commissioners.**—There is hereby created a board of election commissioners for each city that is governed by the provisions of this article, composed of three members, who shall be appointed as follows: Within ten days after this article takes effect, the governor shall appoint three election commissioners, one of whom shall be by him designated as the chairman of the board, and one of whom shall be by him designated as the secretary of the board, which said three election commissioners shall hold their offices for the term of three years, and until their successors are appointed and qualified. All vacancies in said board created by resignation or otherwise shall be filled by appointment by the governor in the same manner for the unexpired term. One of said election commissioners so appointed by the governor shall be a member of the leading party politically op-

posed to that to which the chairman and the secretary so appointed belongs, and shall be chosen from three eligible citizens named by the city central committee of the said leading party politically opposed to that to which the chairman and the secretary belong. The commissioners thus appointed shall be legal voters and shall have resided five years in the state and at least two years next preceding their appointment in said city, and be of approved intergrity and capacity. No commissioner shall hold any office nor be a candidate for any elective office while acting as such commissioner. Each commissioner before taking his seat in such board shall take an oath of office before the circut court having jurisdiction in said city, or before a judge thereof, which oath shall be in substance in the following form, viz.:

I, —— ——, do solemnly swear (or affirm) that I am a citizen of the United States; that I have resided in the state of Missouri for a period of five years last past, and am a legal voter in the city of ———, in said state; that I will support the constitution of the United States, and the state of Missouri, and the laws passed in pursuance thereof to the best of my ability, and will faithfully demean myself and honestly discharge the duties of the office of election commissioner for said city.

Said board shall have the right to employ such additional assistants from time to time as may be necessary to promptly and correctly perform the duties of the office, under the direction of the board. The commissioner belonging to the leading party politically opposed to that to which the chairman and secretary belong, shall appoint two assistants, who shall serve a term commencing thirty days before any election day and ending thirty days after said election day; and said employes shall be subject to the same restrictions and subscribe to the same oath as the members of the board, which oath, when subscribed and sworn to before such court or judge, shall be filed in the office of the clerk of the said court, and be there preserved. Each commissioner shall also, before taking such oath, give bond in the sum of $10,000, with securities to be approved by said court, or by some judge thereof, conditioned for the faithful and honest performance of his duties, and the preservation of the property of the office. Such board of commissioners shall at once secure and open an office sufficient for the purposes of such board, which shall always be kept open during business hours of every day, Sundays and legal holidays excepted. Upon the appointment of such commissioners, the county clerk of the county in which such city is situated, and the board of election commissioners or other custodians of said property shall, upon demand, turn over to such board of election commissioners all registry books, poll-books, tally-sheets and ballot-boxes heretofore used, and all other books, forms, blanks,

25752

stationery and property of every description in his hands in any way relating to registration or election, or the holding of elections, within said city. All the powers and duties now vested in and required of the boards of election commissioners in such cities shall hereafter vest in and be required of the board of election commissioners herein provided for. (Laws 1895, p. 5, Extra Session, amended, Laws 1897, p 113, amended—a.)

SEC. 7272. **Duty of commissioners to divide city into election precincts—re-arrangement of districts after elections.**—It shall be the duty of the commissioners of election, as hereinafter provided for in such cities, within six months after taking effect of this article, to divide such cities into election precincts, regarding ward lines, and composed of compact and contiguous territory, which shall contain as nearly as practicable three hundred actual voters; and in making such division and establishing such precincts, such commissioners shall take as a basis the poll-books or the number of votes cast at the last previous presidential election. At least six months before each presidential election the board of election commissioners shall revise and re-arrange the precincts and increase or decrease their number on the basis of the vote cast at the previous presidential election, making such precincts to contain, as near as practicable, three hundred actual voters, measured by the vote of such election. The precincts in each ward shall be numberd from one upward, consecutively. (Laws 1895, p. 5, Extra Session, amended, Laws 1897, p. 115.)

SEC. 7273. **Ballot-boxes, poll-books, etc., to be provided by board.**—Such board shall provide all necessary ballot-boxes and all registry books, poll-books, tally-sheets, ballots, blanks and stationery of every description, with printed headings and certificates, and other equipment necessary and proper for the registry of voters and the conduct of such elections, and for every incidental purpose connected therewith. (Laws 1895, p. 5, Extra Session.)

SEC. 7274. **General registration of voters provided for.** After the first organization of such board of commissioners, it shall prepare for a new and general registration of voters for the next general city election, or general state or county election, as the case may be; and when made, such registry shall be continued and revised in the manner hereinafter provided. (Laws 1895, p. 5, Extra Session —b.)

(a) 131 Mo. 505.

(b) 135 Mo. 207; 131 Mo. 505.

SEC. 7275. **Judges and clerks of election, how chosen—qualification.**—Said board of commissioners shall, at least sixty days prior to such election, select and choose four electors as judges of election for each precinct in such city. They must be citizens of the United States, and entitled to vote in the ward in which such precinct is located at the next election, and they must be men of good repute and character, who can speak, read and write the English language, and be skilled in the four fundamental rules of arithmetic, and they must be of good understanding and capable; they must reside or have a place of business in the precinct of the city for which they are selected to act, and they must not hold any office or employment under the United States, the state of Missouri, or under the county or city in which such election is to be held, and they must not be candidates for any office at the next ensuing election. Two clerks of election for each precinct shall be selected within the same time by said board, who shall possess the same qualifications as the judges. Being a notary public shall be no disqualification for judge or clerk. (Laws 1895, p. 5, Extra Session.)

SEC. 7276. **How judges and clerks of election shall be chosen—penalty for failure to appear and serve.**—In the selection of judges and clerks of election, two judges and one clerk shall be selected from each of the two political parties of the state polling the largest number of votes at the last general election, to serve in each precinct, who shall be recognized members of the party from which selected. The commissioner, or commissioners, shall select the judges and clerks to represent the party to which said commissioners, or commissioner, belong; and the person thus selected shall be appointed and commissioned by the board, if qualified and confirmed. In case the persons so selected as judges and clerks do not appear for examination, on notification, then some other persons shall be selected and notified as aforesaid, until some eligible person is found who will serve. In all cases where the parties aforesaid do not appear and be examined, or if they do appear and refuse to serve, it shall be the duty of the commissioners to prosecute such persons for such forfeiture herein provided, and collect and pay over the same into the county treasury, or, in cities not within a county, into the city treasury; and the failure of such board of commissioners of election, or either of them, to prosecute such persons, shall be sufficient cause for removal from office, and, when established, the circuit court shall so remove such commissioner or commissioners from office. (Laws 1895, p. 5, Extra Session.)

25753

SEC. 7277. **Examination of judges and clerks of election.**—Each and every person so selected by the board of election commissioners shall be notified of the fact of his selection, with directions to appear, within the time fixed in the notice, before such board for the purpose of examination; and if, upon examination, he is found qualified, he shall, unless excused by such board, be bound to serve as such officer for the term for which he was appointed, or until his successor is selected, if his appointment shall be confirmed by the circuit court; but no person shall be excused by such board except by reason of ill-health, old age, unavoidable absence from the city, or other imperative cause: *Provided*, that a notice, in writing, to said board, sworn to by the person so selected, that he intends to be a candidate for office at the next ensuing election, and naming the office, shall be sufficient excuse for refusal to serve. Said board of election commissioners shall keep books in which shall be written down the names of all such judges and clerks agreed upon before such notification to appear before them, and if, when they appear, they shall be rejected for want of qualification, such fact shall be noted on said books opposite their names, and if excused on the grounds aforesaid, such facts, together with the reasons therefor, shall be noted; and in like manner also, if they do not appear for examination, such fact shall be noted. No person shall be compelled to serve as judge or clerk for two years after the expiration of his term of service. The judges and clerks shall be exempt from jury duty during the term of their service. In case such person so selected and notified to appear for examination shall not appear before such board as required, or if he does appear and shall refuse to serve, he shall forfeit not less than one hundred dollars nor more than three hundred dollars, unless it shall appear that he was not qualified for such service for any reason herein stated, or that he failed to appear for any of the grounds above set forth. And if any judge or clerk of election so selected and notified shall fail to appear for examination, or shall refuse to serve, or be excused as herein provided, the board shall forthwith appoint some other qualified judge or clerk in his place, and notify and examine him as herein provided for notification and examination in the first instance. (Laws 1895, p. 5, Extra Session.)

SEC. 7278. **Selection of judges and clerks to be reported to circuit court—objections—vacancies, how filled.**—As soon as the judges and clerks are selected, a report of such selection shall be made and filed in the circuit court of the city or county, signed by said commissioners, certifying that the provisions of this

article in regard to their qualifications have been complied with, and designating the particular political party from which each judge or clerk is appointed, and an application in writing shall be therewith made by said commissioners before said court for the confirmation of said appointments; whereupon the circuit court, or a judge thereof, shall enter an order that cause be shown, if any exist, against the confirmation of the appointment of any person so selected as judge or clerk, on or before the opening of the court, on a day to be fixed by the court, or said judge; at least five days must elapse between the time of making the application and the time fixed for hearing. Said board of election commissioners shall immediately give notice of such order, and the names of said judges and clerks so reported for confirmation, and their residence and the precincts for which they were selected, by causing the same to be published for two consecutive days in two daily newspapers in said city, and of opposite politics if possible. On the day set for hearing objections, the judges of the circuit court of the city or county, as the case may be, or such member as may be assigned therefor by the court in general term, shall sit to hear and determine all objections made in pursuance of this article relating to the confirmation of such judges and clerks of election. If no cause to the contrary be shown prior to the day fixed for hearing, the appointments made by the board of election commissioners shall be confirmed by an order entered of record. Objections to the confirmation of any judge or clerk of election shall be in writing and filed with the clerk of the court within the time aforesaid, and such objection shall specifically state the grounds upon which it is based, and shall be subscribed and sworn to before the clerk of said court by the person or persons making the same. The said circuit court, sitting as above, shall, on the day fixed for hearing objections, proceed to examine such objections, and shall thereupon fix a day, not later than five days thereafter, to hear such objections, and shall, by order of record, direct the board of election commissioners to serve notice upon the judges or clerks against whose confirmation objections have been filed; and said board of election commissioners shall forthwith serve such notice or notices by delivering the same to the proper person or persons, in the manner provided by law for the service of notices, and shall make due return thereof; and upon the day thus fixed for hearing the objections, the said court shall again sit as above, and shall then proceed summarily to hear and determine the objections made, and shall adjourn from day to day until all objections filed shall be determined. If the courts shall find

25754

that any judge or clerk against whose confirmation objections have been filed does not possess the qualifications in this article prescribed, the appointment of such judge or clerk shall be rejected by order of the court, in which order the cause or causes of rejection shall be specifically stated, and the costs thereof shall be paid by the city. If the objections filed shall be overruled, the appointment of the judge or clerk against whom the same was made shall be confirmed. If the court shall reject any appointments, the board of election commissioners shall forthwith nominate and report as hereinafter provided to said court some other person or persons, having the proper qualifications for judges or clerks, to fill such vacancy or vacancies; and the court shall thereupon summarily confirm or reject such appointments, or any of them, without delay, first giving two days' notice to any party against whom objections may be filed—and in all cases the party appointed to fill a vacancy must be of the same political party as the party whose place he was appointed to fill—and shall thus proceed to receive and pass upon appointments until all the precincts of the city are supplied with judges and clerks: *Provided*, that all objections shall be passed upon, and the list of judges and clerks completed, at least thirty-five days before the next election. Upon the confirmation of such judges and clerks, the board of election commissioners shall issue a commission to each of such judges and clerks, and appropriate forms shall be prepared by said board of election commissioners for such purpose. Such judges and clerks of election shall be commissioned for a term of office ending sixty days prior to the next general state election after the general election at which they were appointed to serve; and during their terms of office they shall also serve as judges and clerks at any special, local or municipal election which may be held. Where a vacancy in the office of judge or clerk shall occur after the final order of the circuit court confirming the appointments of the board of election commissioners, the said board shall make an appointment as hereinbefore provided to fill the vacancy and issue a commission to such officer: *Provided*, that it such vacancy occurs more than ten days before an election, said appointment must be submitted for confirmation to the circuit court, which shall act summarily; and any appointment made by said board shall be from the same political party as the party whose place he was appointed to fill, and when thus appointed such officer shall be subject to the same punishment in case of misbehavior as if confirmed by said court. Said board of election commissioners shall have the right at any time, in case of official

misbehavior or neglect of duty, to remove any judge or clerk of elec tion, and cause such vacancy to be filled in accordance with thi article: *Provided,* that in all cases vacancies shall be filled by the ap pointment of members of the same political party. Such board o election commissioners shall not remove any judge or clerk excep for incapacity or official misbehavior, and the reason therefor mus afterward be reported in writing to such court; and if such remova be willful and without cause, said members of the board of electio commissioners causing said willful removal shall be guilty of a mis demeanor under this article. (Laws 1895, p. 5, Extra Session.)

SEC. 7279. **Oath of judges and clerks.**—After the issue o a commission to such judges and clerks, they shall again be notifie to appear at the office of said board of election commissioners, an shall then and there, after taking the oath of office before the boar of election commissioners, or any member thereof, or some clerk o that office, who are hereby authorized to administer such oaths, re ceive their commissions; and the oath of office shall be in writing and subscribed by each one, and shall be, in substance, as follows

I, ——, residing at ——, in the city of ——, in the state of Missouri, do solemnl swear (or affirm) that I am a legal voter in the city of ——, in the state of Missouri that I will support the laws and constitution of the United States, and of the stat of Missouri, and that I will honestly discharge the duties of and faithfully demea myself in the office of judge or clerk of election (and of registration) for the —— precinct of the —— ward of the city of ——, in the county of ——, in the state o Missouri, according to the best of my ability; that I will not disclose how any vote shall have voted at any election, unless required to do so as a witness in a prope judicial proceeding; that I will make no statement nor give any information of any kind as to the number of votes polled for any office or person, nor any other fac tending to show the state of the polls at any election, at any time previous to th closing of the polls.

(Laws 1895, p. 5, Extra Session.)

SEC. 7280. **Board to select place of registry and polling places.**—It shall be the duty of the said board of election com missioners to appoint the place of registry and also the polling plac in each precinct. Said board shall also cause the same to be fitte up, warmed, lighted and cleaned; but in each election precinct suc place or places shall be in the most public, orderly and convenient por tions thereof, and no building or part of a building shall be designate or used as a place of registry or revision of registration, or as a pollin place, in which spirituous or intoxicating liquor is sold. (Laws 189 p. 5, Extra Session.)

SEC. 7281. **Clerk to furnish names of persons convicte of felony—justices, names of persons convicted of misde meanors connected with right of suffrage—governor t furnish list of pardons.**—It shall be the duty of the clerk o

25755

any court where parties are tried and convicted of penitentiary offenses, in the county where such city is located, or in cities not within a county, or in counties to which changes of venue from such cities in such cases have been taken, to furnish, monthly, to such board of commissioners, the names of all parties from such cities convicted or sentenced for any crimes the punishment of which is confinement in the penitentiary, and their place of residence, if such fact be in the possession of such clerk. It shall be the duty of the clerk of any court or of any justice of the peace of the county in which such city is located, or of said city if not in a county, where or before whom any person is tried and convicted of a misdemeanor connected with the exercise of the right of suffrage, to furnish at once to said board of commissioners the name of the party convicted of said misdemeanor, and his place of residence, if such fact be in the possession of said clerk or said justice: *Provided*, that if appeal shall be taken such facts shall also be certified, and such conviction shall not affect the right to register and vote until final determination of the appeal. It shall be the duty of the governor of the state, on or before the first day of October, in each year, to furnish to such commissioners of election the names of all persons pardoned by him out of the penitentiary, for any crime for which such party was indicted in a county where said city is located, or in a city not within a county. (Laws 1895, p. 5, Extra Session.)

Sec. 7282. **List of deceased male adults to be furnished—penalty.**—It shall be the duty of the person or officer having charge of the vital statistics of any such city to furnish such commissioners of elections, monthly, a report of the names, color and previous residence of all male persons over twenty-one years of age that have died during the preceding month. Any person violating the provisions of this section shall be guilty of a misdemeanor, and fined not less than twenty-five dollars nor more than fifty dollars. (Laws 1895, p. 5, Extra Session.)

Sec. 7283. **Commissioners to furnish lists to judges.**—It shall be the duty of the commissioners of elections to cause to be arranged, as nearly as possible according to wards, the name and the residence, or the former residence, of all such criminals, and of all such deceased parties, and to have the same printed by wards, and furnish a printed list of the names of such persons whose residence was formerly in such wards, to all the judges of election of such wards, when acting as a board of registry, for their guidance; and when he or they shall be advised that a person convicted of a crime

has been pardoned, such fact shall be noted opposite his name. Such list shall be arranged alphabetically. (Laws 1895, p. 5, Extra Session.)

SEC. 7284. **Notice of time and place of registration and election to be given.**—It shall be the duty of such board to give ten days' notice through the press, in newspapers, as provided in section 7278 of this article, of the time and place of registration and election in each precinct of the city; and they shall also cause the printed lists and supplement of registration for the previous election to be posted up at the place of registration, two days before such registration, with a printed notice of the time and place of the next registration—the posting of these lists to be obligatory only after the first registration under this article. (Laws 1895, p. 5, Extra Session.)

SEC. 7285. **Board to make rules and regulations.**—Said board of election commissioners shall make all necessary rules and regulations, not inconsistent with this article, with reference to the registration of voters and the conduct of elections; and shall have charge of and make provision for all elections, general, special, local, municipal, state and county, and of all others of every description, to be held in such city, or any part thereof, at any time. (Laws 1895, p. 5, Extra Session—c.)

SEC. 7286. **Election days declared holidays.**—The days upon which the general, state or county or city elections shall hereafter be held in such city shall be holidays, and shall, for all purposes whatever as regards presenting for payment or acceptance and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, and as regards days of grace upon commercial paper, be treated and considered as is the first day of the week, commonly called Sunday. (Laws 1895, p. 5, Extra Session.)

SEC. 7287. **Subsequent selections of judges and clerks.** At least sixty days prior to the next general election occurring immediately after the expiration of the term of office of said judges and clerks, said board of election commissioners constituted and appointed as hereinbefore provided shall cause judges and clerks of election to be again selected, who shall be selected, appointed and commissioned in the same way, according to the same forms and subject to the same qualifications and limitations as required for the selection and appointment of such officers in the first instance hereunder. (Laws 1895, p. 5, Extra Session.)

(c) 141 Mo. 45.

25756

SEC. 7288. **Judges to constitute precinct boards of registry.**—The judges of election shall constitute the board of registry in the precinct for which they shall be appointed. (Laws 1895, p. 5, Extra Session.)

SEC. 7289. **Qualifications of voters.**—Every male citizen of the United States, and every male person of foreign birth who may have declared his intention to become a citizen of the United States, according to law, not less than one year nor more than five years before he offers to vote, who is over the age of twenty-one years, who has resided in the state one year next preceding the election at which he offers to vote, and during the last sixty days of the time shall have resided in the city where such election is held, and during the last twenty days of that time in the precinct at which he offers to vote, who has not been convicted of bribery, perjury or other infamous cirme, or of a misdemeanor connected with the exercise of the right of suffrage, nor directly interested in any bet or wager depending upon the result of the election, nor an officer, soldier or marine in the regular army or navy of the United States, nor while kept at any poor house or other asylum at public expense, nor while confined in any public prison, shall be entitled to vote at such election, for all officers, state or municipal, made elective by the people, or at other elections held in pursuance of the laws of the state; but shall not vote elsewhere than in the precinct where his name is registered, and whereof he is registered as a resident. (Laws 1895, p. 5, Extra Session.)

SEC. 7290. **When registration shall be made—how conducted.**—Such board of registry and the election clerks shall first meet in the precinct on Tuesday four weeks preceding the first general city election, or the first general state or county election, which may occur after the first appointment of such board of election commissioners, at the place designated by such board of commissioners, and they shall then proceed to make a general registration of all voters in such precinct. A new general registration shall be made by the board of registry in every year thereafter in which a presidential election occurs, and just prior thereto—the first day of such registration being on Tuesday, four weeks before such election, and the second day of registration being on the Saturday following; and the third day, Tuesday, three weeks before such election. Three registry books shall be furnished to each board of registry by the board of election commissioners for the purpose of such registration, and such books of registry shall be prepared substantially in the following form:

(Left-hand Page.)

## REGISTER OF VOTERS.

| Residence. | Name. | No. of line. | Nativity. | Color. | Term of residence. | | | Native. | Naturalized. | Declaration of intention. | Date of papers. | Court. | By act of Congress. | Qualified voters. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | Precinct. | City. | State | | | | | | | |
| 1817 E. 7th St. | Ames, Wm. J. | 1 | Massachusetts | White | 6 months. | 2 years. | 10 years. | Yes. | | | | Superior | | Yes. |
| 220 Phelps Ave | Allen, John | 2 | England | White | 3 months. | 3 years. | 5 years. | | Yes. | | May 27, 1871. | New York | | Yes. |
| 413 Garfield Ave. | Austin, George. | 3 | Georgia | Colored | 3 days | 5 years. | 6 years. | Yes. | | | | Not known | | No. |
| 617 Woodland Av. | Anschuler, Carl. | 4 | Germany | White | 2 years. | 6 years. | 6 years. | | Yes. | | July 1, 1868. | Baltimore Circuit | | Yes. |
| 225 Ord St. | Abbott, John B. | 5 | Canada | White | 1 year | 3 years. | 3 years. | | | Yes. | Nov. 7, 1883. | Kansas City | | Yes. |

Original Page.

——PRECINCT,——WARD.

| Date of application to be registered. | Why disqualified. | No. of line. | Erased. | Restored. By com'rs. | Restored. By court. | Vote challenged. | Voted. 1 | 2 | 3 | 4 | 5 | 6 | Signature. | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| October 5, 1885 | | 1 | | | | | | | | | | | | |
| October 5, 1885 | | 2 | | | | | | | | | | | | |
| October 12, 1885 | Has not resided in precinct long enough | 3 | Yes | | | | | | | | | | | |
| October 12, 1885 | | 4 | | | | | | | | | | | | |
| October 12, 1885 | | 5 | | | | | | | | | | | | |

23737

One of said registry books shall be denominated "public register" on the outside or on the first page. Said board of registry shall then proceed as follows:

*First*—They shall open the registry at eight o'clock a. m., and continue in session until nine o'clock p. m., on each of said days. One of the judges shall administer to all persons who shall personally apply to register the following oath or affirmation:

You do solemnly swear (or affirm) that you will fully and truly answer all such questions as shall be put to you touching your place of residence, name, place of birth, your qualifications as an elector, and your right as such to register and vote under the laws of this state: so help you God.

*Second*—Each of said clerks of election and one of said judges of election shall have charge of the registry books, and shall make the entries therein required by this article, and one of the judges shall ask the questions as to qualifications, and after he is through any of the judges may ask questions. One of the judges of election may, when necessary, relieve one of the clerks from time to time, as necessity may seem to demand, in making entries in said book.

*Third*—The name of every applicant shall be entered in such registry book, and all the facts shall be therein stated, as hereinafter provided, whether he is entitled to vote or not. If it shall be determined by the board of registry that he is not a qualified voter in such precinct, then an entry shall be made in the appropriate column, "no," and if qualified, an entry shall be made in the same column, "yes." Unless a majority of the judges shall determine the applicant is a qualified voter, he shall be entered as not qualified; in case of a tie the board of commissioners shall decide, subject to the applicant's right of appeal to the circuit court as hereinafter provided.

*Fourth*—Only such male persons, of the age of twenty-one years, residing in such precinct, as apply personally for such registration, shall be entered in such register; but every applicant who would be twenty-one years of age on the day of the next election, or, if foreign born, whose declaration of intention to become naturalized will have been made one year before such election, if otherwise qualified, shall be entered on such registers. Every applicant who has commenced to reside in such precinct at least twenty days before such election shall be enetred in such registry, and shall be marked "qualified" or "disqualified," as the case may be; but unless, on the day of election, he shall have resided twenty full days in such election precinct, he cannot vote therein, although otherwise qualified.

*Fifth*—The headings to the registry books shall be so prepared that the registry shall be made alphabetically, according to the sur-

25758

name of each person applying, but it shall be arranged so that the residence of such person shall appear in the first column. The register shall be ruled, and one name shall be written on each line, but no name shall be written between the lines. The entries shall be as follows:

1. Under the column "residence," the name and number of the street, avenue, or other location of the dwelling, if there be a definite number, and if there shall not be a number, such clear and definite description of the place of such dwelling as shall enable it to be readily ascertained. If there shall be more than one house at the number given by the applicant as his place of residence, state in which house he resides, and, if there be more than one family residing in said house, either the floor on which he resides, or the number or location of the room or rooms occupied by him, whether front or rear—every floor below the level of the street or ground being designated as the basement, the first floor above the level being designated as the first floor, and each floor above that as the second or such other floor as it may be.

2. Under the column "name," the name of the applicant, writing the surname first, and given or Christian name after in full.

3. Under the column "nativity," the state, county, kingdom, empire or dominion, as the fact stated by the applicant shall be.

4. Under the column "color," the word "white" or "colored," as the fact is.

5. Under the subdivision of the general column "term of residence," the periods, by days, months or years, stated by the applicant.

6. Under the column "native," the word "yes;" under the column "naturalized," the word "yes," according to the fact stated. If the applicant be of foreign birth, and has not been naturalized, but has made a declaration of intention to become a citizen, then under the column "declaration of intention," the word "yes."

7. Under the column "date of papers," the date of naturalization, if naturalized, or of the declaration of the intention if made, or about that date. Where the applicant is of foreign birth, the board of registry shall require him to produce his naturalization papers or declaration of intention, as the case may be, unless the applicant shall make affidavit that they are lost or destroyed, and that he is unable to procure certified copies of them, with the reasons why he cannot procure them.

8. Under the column "court," the designation of the court in which, if foreign born, such naturalization was had or declaration of intention made; and if the name of the court cannot be had with certainty, then the name of the place in which such court was located.

9. Under the column "by act of congress," the word "yes;" in case such person, though foreign born, has been made a citizen by act of congress, without taking out his naturalization papers.

10. Under the column "qualified voter," the word "yes," or "no," as the fact shall appear or be determined by the board of registry—it being, however, required of them to designate as a qualified voter any male person who, if otherwise qualified, shall not, at the time of making application, be of age, provided the time when such applicant shall be of the age of twenty-one shall be subsequent to the date of his application, and not later than the day of election immediately following such time of applying, or, if foreign born, whose declaration of intention to become naturalized will have been made one year before such election.

11. Under the column "date of application," the month, day and year when the applicant presented himself and was adjudged a qulified voter in the election precinct.

12. Under the column "signature," in one of the registers, not the public register, the applicant shall write his name. If he is unable to write, he shall make his mark after his name is writen for him.

13. Under the column of "remarks," whenever any member of the board of registry shall be in doubt about registering the applicant, said board shall require the applicant to give the name of three residents of the city who know that said applicant resides at the place from which he offers to register, which names shall be entered under the column headed "remarks." (Laws 1895, p. 5, Extra Session—d.)

SEC. 7291. **Attestation of each day's registration lists.** At the end of each day's registry or revision of registration, each of said judges shall sign his name at the end of the list on each page so that no new name can be added without discovery, and shall also sign a certificate, as hereinafter provided; but, before doing so, the said judges and clerks shall compare the three registers so kept, and cause any differences to be corrected, and make the same agree in all respects; and said judges shall then attach a certificate at the end of each register, in substance in the words and figurese following:

(d) 135 Mo. 207.

25759

We, the undersigned judges of election in ——precinct of the —— ward of the city —— in the state of Missouri, do jointly and severally certify that at the general registration of electors in said election precinct, on the —— day of ——, there were registered by us in said election precinct the names which in this book are entered, and the number of registered and qualified voters was and is the number of ——.

Dated ——.

(Laws 1895, p. 5, Extra Session.)

SEC. 7292. **Public exhibition of registry lists—proceedings when applicant for registration is rejected.**—Said boards of registry shall, on or before noon of the day following the completion of such registry, after providing for proper protection of same, hang up the register, which shall be known as the public register, at the place of registration, so that it shall be accessible to the pulic during all business hours; but the two other registers shall then be returned to the board of election commissioners at once. Any voter of the precinct shall be permitted to be present at the place of registration in said precinct, and shall have the right to challenge any applicant who applies to be registered, but he shall be examined, under oath, touching the cause for such challenge; and, when challenged, the applicant for registration must make an affidavit, in writing, setting out the facts which constitute him a voter in such precinct and file it with said board of registry, and if it shall be deemed sufficient, and if the board is convinced that such person is a qualified voter, then he must be admitted to such registry as qualified. Whenever any person claiming to be an elector of any election precinct in such city has, upon application, been denied the right to be registered as a qualified voter in such precinct, if two of the precinct judges favored registering him at the time of his application, he may, within three days after the day on which said boards of registry sit for revision of the registration, make and sign an application, in writing, under oath, to said board of commissioners, in substance in the following form:

I do solemnly swear (or affirm) that I, ——, did on ——, make application to the board of registry of the —— precinct of —— ward of the city of ——, and that said board refused to register me as a qualified voter in said precinct; that I reside in said precinct, at No. —— street, am a duly qualified voter and entitled to vote in said precinct at the next election.

And if such person shall, at the time of making the said affidavit, file with said board of election commissioners a statement or certificate signed by two of said precinct judges of opposite politics, to the effect that they believe such person is entitled to registration, the board shall examine into the facts, and if said board believes that such person is a qualified voter and entitled to registration in such

precinct, said board shall enter his name on the proper register as is here and after provided, and thereon note the manner of his registration and shall file and preserve said affidavit and certificate in the office of the board. All of the proceedings before said board of commissioners in examining such applications shall be public and the orders of said board shall be published from day to day in the newspapers having the city printing in such city. The boards of election commissioners shall furnish to the board of registry in each precinct two blank books, which shall be named "verification lists," each page of which shall be ruled into four columns, and those on the left hand side shall be marked thus:

REGISTERED NAMES.

| Street number. | Name of street. | Names of voters. | Register No. | Remarks. |
|---|---|---|---|---|
| ..... | ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... | ..... |

And the pages on the right hand shall be marked thus:

NAMES NOT REGISTERED.

| Street number. | Name of street. | Names of voters. | Remarks. |
|---|---|---|---|
| ..... | ..... | ..... | ..... |
| ..... | ..... | ..... | ..... |

Such books shall each contain pages sufficient for each street, avenue, alley and court in the precinct. During the progress of registration, or immediately thereafter, the clerks of said board shall transfer all the names upon the register to the left hand page of such "verification lists," arranging them according to the streets, avenues, alleys or courts, beginning with the lowest residence number, and placing them numerically, as nearly as possible, from the lowest up to the highest number. They shall first write the name of such street, avenue, alley or court at the top of the second column and then proceed to transfer the registered names to the page of such "verification lists," headed "registered names," according to the street number as above indicated. On the opposite page, headed "names not registered," the name of the same street, avenue, alley or court shall be written in the second column. If, during either day of registration, a registered voter of the ward shall come before the board of registry and make oath that he believes that any particular person upon said registry is not a qualified voter, such fact shall

25760

be noted; and after the completion of such "verification lists," such board, or one of said judges, shall make a cross or checked mark in ink opposite such name upon each of said "verification lists." If such judges shall, however, know that any person so complained of is a qualified voter, then such cross or checked mark shall not be put upon such lists, but shall go upon such list in case any one of the judges desires. Said judges shall, before noon of the next day, hang up such public register at the place of registration, and within the same period of time return the other two registers to the office of said election commissioners. (Laws 1895, p. 5, Extra Session, amended, Laws 1897, p. 111.)

SEC. 7293. **Clerks of election constituted precinct canvassers—duties.**—The clerks of election are hereby constituted canvassers of the precinct for which they are appointed, and upon the Wednesday and Thursday following the third day of registration, if so much time shall be required, said two clerks shall, each having one of said "verification lists," go together and canvass such precinct, calling at each dwelling place or each house where any one may reside in such precinct, and each dwelling place is indicated upon said "verification lists," and ascertain the name of every male inhabitant over twenty-one years of age residing in such precinct; and if they shall find that any person upon their "verification lists," on the left hand page thereof, does not reside at the place designated thereby, they shall make a check mark or cross (X) opposite such name. Said canvassers shall also write down in their "verification lists," on the right hand page thereof, so designated, "names not registered," according to the street and street numbers, all the names of all persons so ascertained by them who reside in such precinct whose names are not already upon their "verification lists." No name shall be written down on said right hand page which already appears on said left hand page of said "verification lists." Whenever deemed necessary by said canvassers, or either of them, he or they may demand of the chief, captain, sergeant or other person having command of the police in such portion of the city, to furnish a policeman to accompany them and protect them in their duties when necessary; and it shall be the duty of such chief, captain, sergeant or other person having authority over such police in such locality to furnish a policeman for such purpose, and in default thereof, such chief, captain, sergeant or other person shall be deemed guilty of a misdemeanor under this article, and shall be liable to a penalty of not less than twenty-five nor more than one hundred dollars. If, in

making any such canvass, any person shall refuse to answer question and give the required information asked for and known to him or her such person shall be deemed guilty of a misdemeanor under this article, and shall be liable to a penalty not to exceed $50. In making such canvass, such canvassers shall make special inquiry at the residences as designated in the registry and "verification lists," as to all the persons so registered as qualified voters. In making such canvass, said clerks shall meet at eight o'clock in the forenoon of each day, at such place in said precinct as the judges or majority of them shall direct, which direction of said judges shall be in writing signed by the said judges or a majority of them; three copies thereof shall be made; one copy shall be given to each of said clerks at the close of the third day of registration, and the third copy thereof shall be returned to the board of election commissioners. Any neglect of such judges to give such direction to said clerks shall be deemed a misdemeanor, and such judge, on conviction thereof, shall be punished by imprisonment in the county or city jail not less than one nor more than six months. Said clerks shall meet at eight o'clock in the forenoon of each day of said canvass, at the place designated in said direction of the judges, and proceed with such canvass as hereinbefore directed. Each of said clerks shall have one copy of said "verification lists;" and if either of said clerks shall fail to appear at the place designated in such direction of the judges by fifteen minutes after eight o'clock on either of said days, the chairman or secretary of the board of election commissioners of the same political faith as the clerk failing to appear, or, after appearing, failing to complete said canvass, shall immediately appoint a clerk of the same politics as the one absent or failing to act. And such clerk so willfully failing to appear at the place designated in said direction of the judges, or willfully refusing to continue or abandoning said canvass, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction thereof, by imprisonment in the county or city jail for not less than one month nor more than one year. (Laws 1895, p. 5, Extra Session.)

SEC. 7294. **Notices to be sent to persons not found.**—Immediately upon the completion of said canvass, said canvassers or one of them, shall sign a notice and send the same through the United States mail, duly stamped, to the address given upon the registry and "verification lists," of all persons named therein against whose names they have made a cross or check mark, indicating 'that they did not reside at such place as before stated, and also t

25761

the address of all persons against whose names said registry board or judge of election has placed a check mark or cross in such "verification lists," which notice shall require such person to appear before the board of registry upon the Saturday following, giving the time of succession, and to show cause why his name should not be erased from such registry Proper blanks and postage stamps shall be furnished for the purpose to said canvassers by the board of commissioners. A similar notice shall also be served by one of said canvassers, either at the time such canvass is being made or before the following Saturday, by leaving the same with the party, if found, or, if he be not found at the place designated in such registry and "verification lists," by leaving the same at such address, if there be such place. Such notice, to be sent through the mail, must be mailed not later than ten o'clock Friday morning of the week of such canvass. If sufficient postage stamps are not delivered to such canvassers by said board for the purpose aforesaid, then any one may furnish such postage stamps to such canvassers for that purpose, or such canvassers may procure the same at their own expense, and afterward render an account therefor to said commissioners, duly sworn to; and it shall be the duty of the said commissioners to audit said account and cause the same to be paid. It shall be the duty of such commissioners, upon application, to deliver to such canvassers postage stamps sufficient for the purpose aforesaid, when not delivered before, and it shall be the duty of such canvassers, or one of them, to apply to said commissioners for such postage stamps, if sufficient number have not been delivered to them for the purpose aforesaid; and any willful neglect of said canvassers to make application for sufficient postage stamps as aforesaid, and any willful neglect of such canvassers to mail the notice aforesaid to all the parties checked and designated as aforesaid, and the willful neglect of such canvassers to leave the notice aforesaid at the place designated for such person so designated, and any willful neglect to check the name of any person on said "verification lists," transferred form the registry as aforesaid and not found at the place designated, and any willful neglect to transfer all the names from the registry as aforesaid to such "verification lists," in the manner aforesaid, shall be deemed a misdemeanor, and such canvasser or canvassers shall be punished, upon conviction thereof, by imprisonment in the county or city jail for not less than one month nor more than one year. And it shall be the duty of said board of election commissioners, when complaint is made to them, to investigate the action of such clerks

or canvassers, and to cause them to be prosecuted criminally for such willful neglect of duty. (Laws 1895, p. 5, Extra Session.)

SEC. 7295. **Revision of registry—false affidavit, penalty—naturalized citizens.**—On the Saturday following the Tuesday three weeks preceding such general county, city or state election, said board of registry shall again meet at the place designated, and the said clerks of election shall meet with them, and they shall remain in session from 12 o'clock noon until 10 o'clock p. m., for the sole purpose of revising their registry; and no new names shall be added. Said canvassers, or one of them, shall make out a list of the names of parties checked and designated as aforesaid, and to whom such notice has been sent, given or left with the address, and make and attach his or their affidavit or affidavits thereto, stating that notice duly stamped was mailed to each of said parties at the places designated on such lists, on or prior to 10 o'clock a. m. of the previous Friday, and that notice was also personally left at the said address of each of said parties named in said list so attached, if there be any such address. Blank affidavits shall be furnished by said commissioners for the purpose aforesaid; but if none are furnished, such canvassers shall cause the same to be drawn, and they shall swear to such affidavit before one of the judges of such precinct. If either of said canvassers shall willfully neglect and fail to make such affidavit with the list aforesaid attached, he shall be punished in the manner as last above provided, and if such affidavit shall be willfully false, the maker thereof shall also be punished in the manner last aforesaid, and shall also be liable for perjury. If any person to whom such notice has been sent shall appear before the board of registry during that session, he shall make oath and sign an affidavit, in substance as follows:

I do solemnly swear that I am a citizen of the United States (or have declared my intention to become a citizen of the United States on the —— day of ——, 19—, according to law), and that I have resided in the —— precinct of the —— ward in the city of —— and the county of ——— and the state of Missouri, since the ——— day of ———; that I am not an officer, soldier or marine in the regular army or navy of the United States, and that I have never been convicted of any felony, or of any misdemeanor connected with the exercise of the right of suffrage (or if convicted, state the time of conviction, and when pardoned by the governor of the state).

This affidavit shall be signed and sworn to before one of such board of registry, and it shall afterward be preserved and filed in the office of said election commissioners. Thereupon said board of registry shall further examine him, and shall also swear such canvassers and hear them upon the question, and they shall also have the power to send one or both of said canvassers to make further examination and inquire at the place claimed by such person to be

25762

his residence, and again examine such canvassers touching the same; and if, after such further examination and hearing, the majority of said board are of the opinion that such person is not a qualified voter in such precinct, they shall mark the word "yes" under the column of the registry marked "erase," and shall also draw a line in ink under his name; which memorandum, in case of any registration, shall indicate that the name of such person is erased from the register, and such person shall not be entitled to vote unless his name be restored as hereinafter provided. If any person already registered shall appear before said board at such session and make oath that he has removed to another place in the same precinct, said board, if they believe him, shall not erase his name, but shall make the proper correction in his residence in the books of registry. If any person to whom notice has been sent because his declaration of intention to become naturalized has been made more than five years before the next election, shall appear before said board at such session, he shall show in the same manner as in case of original registration that he has become naturalized, otherwise his name shall be erased from the register. In making correction of entries as to residence and naturalization, a line shall be drawn through the former entries, the proper entries made, and the word "corrected," with the date, written in the column headed "remarks." During the last hour of said session, if any person so notified to appear at such session shall have not yet appeared and shown cause why his name should not be erased from such register, the same shall be erased in the manner aforesaid. Either of said clerks shall have the power and right of both in the matter pertaining to such canvass, except that both are required to go together to make such canvass. But a clerk who willfully neglects to perform his duty in making such canvass shall be deemed guilty of a misdemeanor, and on conviction shall be imprisoned in the county or city jail not less than thirty nor more than sixty days. In case of temporary disability on the part of either canvasser or clerk, the judge who belongs to the same political party may appoint a temporary clerk or canvasser, who shall belong to the same party, and administer to him the usual oath of office, and he shall perform all the duties of the office until the disability of the regular clerk or canvasser is removed. The "verification lists" aforesaid, after the final revision, shall be at once returned by the board of registry to the board of election commissioners. (Laws 1895, p. 5, Extra Session.)

SEC. 7296. **Correction, verification and printing of registers.**—At the end of the last session provided for, the said board of registry and said clerks shall compare and correct the three registers aforesaid and make them correspond and agree; and said judges shall then, immediately following the last name on each page of the register, sign their names so that no other name can be added without discovery, and shall add the certificate as provided at former sessions; and thereupon, and during the forenoon of the next secular day, said judges shall hang up the register, known as the public register, in the place of registration for the use of the public, which shall remain there until after the election, and shall return the other two registers to the possession of the board of election commissioners; and thereupon the said board of commissioners shall at once cause copies to be made of such registers, of all the names upon the same, with the address and registration number not marked erased, and shall have the same arranged according to the streets, avenues, courts or alleys, commencing with the lowest number, and arranging the same in order according to street numbers, and shall then cause such precinct register, under such arrangement, to be printed in plain large type, in sufficient numbers to meet all demands; and upon application, a copy of the same shall be given to any person in such precinct. Said commissioners may, in their discretion, cause such precinct register to be published in one or more newspapers published in said city. (Laws 1895, p. 5, Extra Session.)

SEC. 7297. **Application for erasure of names on register.**—Any voter or voters in the ward containing such precinct may make application, in writing before such board of election commissioners, to have any name upon such register of any precinct in the ward erased; which application shall be in substance in the words and figures following:

I (or we) —— do hereby solemnly swear (or affirm) that I (or we) believe that —— is not a qualified voter in —— precinct of —— ward of the city of ——, and hence I (or we) ask that his name be erased from the register of such precinct.

But it shall be a misdemeanor to sign or cause to be so filed any such application to have erased any name lawfully upon any such register, unless the person signing such application had then cause to fairly justify him in a belief that the name ought to be erased from such register. Such application shall be signed and sworn to by the applicant, and filed with said board. Thereupon, notice of such application, with a demand to appear and show cause why his name shall not be erased from said registry, shall be personally served upon such person, or left at his place of residence, named in such

25763

registry, by a messenger of said board of commissioners; as to the manner and time of serving such notice, such messenger shall make affidavit; said messenger shall also make affidavit of the fact in case he cannot find such person or his place of residence, and that he went to the place named on such register as his place of residence, which affidavit shall be sufficient evidence of due notice. Such notice shall be served at least one day before the time fixed for such party to show cause. Said commissioners shall also cause a like notice or demand to be sent by mail, duly stamped, and directed to such person to the address upon such registry, at least two days before the day fixed in said notice to show cause. (Laws 1895, p. 5, Extra Session.)

SEC. 7298. **Docketing and hearing applications.** — A docket of all applications to said commissioners for the purpose of erasing a name on the register, shall be made out in the order of the wards and precincts. The commissioners shall sit to hear such applications on the Tuesday and Wednesday immediately preceding such election. They shall take up the wards and precincts in their numerical order. The decision on each application shall be announced at once after hearing, and a minute made thereof. Where an application to erase a name shall be allowed, said board shall cause the same to be erased forthwith. (Laws 1895, p. 5, Extra Session.)

SEC. 7299. **Duty of court as to applications to be placed on registry—registers to be delivered to judges, when.**— The circuit court shall, on Friday and Saturday of the week prior to the week in which such election is to be held, specially sit to hear such applications as shall be made to it to be placed upon the register in any particular precinct. Such application shall be sworn to, and shall state that the party making the same has applied to the board of registry of the precinct and to the board of election commissioners, and that one or both boards refused to place him on such registry, or has stricken his name from such registry, as the case may be. Applications shall be made on or before the opening of the court on the Friday last aforesaid, and the court shall cause a docket of such applications to be made out, arranged by wards and precincts, and the same shall be heard summarily, and evidence may be introduced for and against such application. No formal pleadings shall be required. Each case shall be decided at once on hearing, and the clerk of the court shall make a minute of the disposition of each application; a copy of such minute shall at once be given to said commissioners, who shall forthwith cause such names to be placed

upon the appropriate register, and indicate that it was entered by order of the court. After the entry of the application so allowed by said court, no further change shall be permitted, and the appropriate stamp prepared shall be affixed to the end of each page of names in each precinct registered by said board of commissioners. Said books of registry so prepared shall, on the day prior to the election, be delivered to the judges of election, one only, however, to be delivered to the judge or judges representing the same political party. No person admitted to the registry by order of such court or such board shall be protected by such order in case he should be indicted for false registration or false voting. (Laws 1895, p. 5, Extra Session.)

SEC. 7300. **Appeals from action of circuit court.**—In case said circuit court shall refuse any such application, an order shall be entered accordingly on the Wednesday following the session of the court held for the purpose aforesaid, and any person desiring to appeal from the said order may appeal to the supreme court of the state, or court of appeals, according to the facts, if application be made therefor within five days after the entry of said order, and such appeal shall be allowed on the giving of an appeal bond in the penalty of $250, conditioned to pay the expenses of such appeal in case his appeal be not sustained. The time for filing such appeal bond and certificate of evidence shall be fixed by the court, and upon presentation to the court of a certificate containing the evidence heard at such hearing within the time fixed by the court, the court shall sign the same, and thereupon the same shall become part of the record in said cause. (Laws 1895, p. 5, Extra Session.)

SEC. 7301. **Supplemental lists of names added and erased to be printed, etc.**—A supplemental list of all persons who shall have been registered by order of such court, and a supplemental list of all persons erased from such registry by order of said board of commissioners or of said court, of sufficient quantity to accommodate each precinct, shall be printed by such board, and thereupon, on the day of election, said board shall cause to be posted up at each precinct where such election is to be held, the original printed registry and the supplemental lists aforesaid, and shall also cause a copy thereof to be delivered to each judge and clerk, and to all other persons of the ward demanding the same. (Laws 1895, p. 5, Extra Session.)

SEC. 7302. **Registration only on personal appearance of applicant—subsequent registrations.**—Every general reg-

25764

stration shall be made in the same manner and in conformity with directions heretofore given. At every general registration, every person desiring registration must appear in person and make application under oath, as in the case of the first registration herein provided. The same forms and blanks and methods of proceeding shall be had before and by the board of registry, and by the canvassers, and by and before the judges of election and election clerks, and by the board of election commissioners and court, in every subsequent general registration, as is directed herein for the first registration, and election following the same. (Laws 1895, p. 5, Extra Session.)

INTERMEDIATE REGISTRATION.

SEC. 7303. **Intermediate registration provided for.**—At every election held in such city between the general registrations above referred to, the last general registration shall be used, but the same shall be revised by the board of registry of each precinct where such election is to be held, and for that purpose the board of registry shall meet on Tuesday, three weeks preceding such election, and shall hold a session from eight o'clock a. m. till nine o'clock p. m. on that day, and names may be added to the registers in the same way, upon sworn applications, as in the case of a general registration, and all the other forms and requirements are to be observed as provided with reference to general registration, both as regards the canvass after registration, the revision of the registration, and otherwise. (Laws 1895, p. 5, Extra Session.)

SEC. 7304. **Registers open for inspection.**—The registers in the office of the election commissioners shall at all times be open to public inspection without charge. (Laws 1895, p. 5, Extra Session.)

SEC. 7305. **Poll-books, ballot-boxes, etc., to be delivered to judges.**—Said judges of election of any precinct shall, on the day preceding any election, call at the office of said commissioners and receive two registers of said precinct, one being received by the representative of one leading political party, and the other by the representative of the other leading political party. The ballot-box of such precinct shall be delivered to one of said judges, and it shall contain the poll-books and all the blanks and stationery required for such election, with a sealed package of ballots and the key or keys shall be given to a judge of the opposite party. (Laws 1895, p. 5, Extra Session.)

SEC. 7306. **Registers to be returned to commissioners after elections.**—On election day said judges shall take possession of said third or public register, and after such election, and on the next day, all three of said registers shall be returned to said board of election commissioners, and said third public register shall, immediately after such election, be corrected by said board of commissioners so as to correspond with the other two registers, or in case it shall be mutilated, or in case any register of any precinct shall be lost, said board of commissioners shall cause a true copy to be made from the other register or registers, so that prior to the next meeting of the board of registry there shall be three registers for each precinct. This section is made applicable, and it shall be the duty of the judges of election to observe it, after each and every election. (Laws 1895, p. 5, Extra Session.)

SEC. 7307. **Removal, mutilation or destruction of register a misdemeanor—penalty.**—If any person shall willfully remove, mutilate or destroy the public register hanging up at the place of registry, he shall be deemed guilty of a misdemeanor, and upon conviction shall be imprisoned in the county or city jail not less than three months nor more than twelve months. (Laws 1895, p. 5, Extra Session.)

SEC. 7308. **Vacancy on board of registry, how filled.**—Any vacancy upon such board of registry on the day of registration shall be filled by the judge or judges present, always selecting a person of the same political party as the party absent, which appointee shall be vouched for by the remaining judge of such party for said precinct; and the same oath shall be administered by one of the judges present to such temporary judge as provided for regular judges. Whenever any regular judge shall return or be present, such temporary incumbent shall vacate his office. (Laws 1895, p. 5, Extra Session.)

SEC. 7309. **Revision of registry not to be made, when.** At any special election occurring in a portion of such city only, or which is to fill a vacancy occurring in a single office, or which is to submit propositions or amendments to a vote of the people, there shall not be a previous revision of the registry. (Laws 1895, p. 5, Extra Session, amended, Laws 1897, p. 110.)

ELECTION.

SEC. 7310. **Polls to be opened and closed, when.**—The election polls shall be open at six o'clock in the morning and con-

25765

tinued open until seven o'clock in the afternoon of the same day, at which time the polls shall be closed, and if any judge or clerk shall be behind time for fifteen minutes after the time for opening such polls he shall be guilty of a misdemeanor under this article and punished accordingly. No judge or clerk shall absent himself to exceed five minutes at any one time until the ballots are all cast and counted and returns made, except one at a time of such judges or clerks may absent himself for sufficient time to cast his vote. (Laws 1895, p. 5, Extra Session, amended, Laws 1897, p. 116.)

SEC. 7311. **Judge or clerk absent, vacancy, how filled—penalty for absence or refusal to act—other penalties.**—If any judge or clerk shall not be present after the expiration of fifteen minutes from the time to open the polls, or be disqualified or refuse to act, the judge or judges present shall fill the place of such absent judge or clerk, or vancancy, always selecting a person of the same political party as the party absent. And one of the judges shall administer to such substitute the oath as required of the judge or clerk originally appointed, and blank forms shall be sent out by the commissioners for such purpose, which oath shall be preserved and returned to the commissioners, and such appointee shall be subject to the same punishment and penalties as any other judge or clerk. Whenever such regular judge or clerk shall be present, such substitute shall cease to act. Any judge or clerk who shall willfully absent himself from the polls on election day, without good cause, shall be guilty of a misdemeanor, and be subject to a fine or penalty of five hundred dollars. And if such judge or clerk shall willfully detain any register or poll-book or ballot, and not cause them to be produced at the polling place at the opening of the polls, or for fifteen minutes thereafter, he shall be guilty of a misdemeanor, and, on conviction, shall be imprisoned not less than three months nor more than one year in the county or city jail, or be fined not less than $200 nor more than $1,000. (Laws 1895, p. 5, Extra Session.)

SEC. 7312. **Ballot-box to be kept in public view.**—Before voting begins the ballot-box shall be empty, and it shall be opened and shown to those present to be empty; and it shall not be removed from the public view from the time when it is shown to be empty until after the close of the polls. It shall be locked and the key delivered to one of the judges, and shall not be again opened until the close of the polls. The judges of election shall each be held guilty of a misdemeanor, and on conviction shall be fined $1,000 if such ballot-box shall not be kept constantly in public view during the progress of the

election, unless it shall be shown by such judge that he protested against such obstruction of the view of the ballot-box, and was overruled by the majority of the judges. If any barricade or other obstruction of any kind shall be, prior to or during such election, interposed, so that all who desire cannot constantly see such ballot-box, it shall be the duty of such judges to remove such obstruction on request, or on their own motion; and if such obstruction shall not be removed on request, it shall be the duty of any sheriff, constable or police officer to remove the same on request. And such judges shall be guilty of a misdemeanor and liable to a penalty of $1,000, on conviction, for not removing the same on demand, and shall be imprisoned in the county or city jail not less than six months nor more than one year. Any judge or justice of the peace shall have jurisdiction, on complaint, to issue a warrant to any constable, or the sheriff of the county or city, to remove such obstruction as a nuisance; and in executing such warrant, he may call any person to his assistance, and no other officer of the law or private individual shall interpose or interfere with such removal; and if he does, he shall be guilty of a misdemeanor, and on conviction he shall be imprisoned in the county or city jail not less than sixty nor more than ninty days. (Laws 1895, p. 5, Extra Session.)

SEC. 7313. **Duties of clerks.**—Each of the clerks of the election shall keep a poll-book which contains a column headed "Number," another headed "Residence," and another headed "Names of Voters." The name and street and number of the residence of such elector voting shall be entered upon each of the poll-books by the clerks, in regular succession, under the proper headings, and the number of such voter, in the order in which he voted, placed opposite the name in the column headed "Number." (Laws 1895, p. 5, Extra Session.)

SEC. 7314. **Duties of judges.**—One of said judges of said election shall receive the ballot from the voter, and shall announce the residence and name of such voter in a loud voice. Said judge shall then write on the back of said ballot the number of the same, in the order in which it was received, which number shall also be placed opposite the name of said voter in the poll-book in the column headed "Number," and put said vote into the ballot-box, in presence of the voter and the judges and clerks of said election, and in plain view of the public. The judges having charge of such registry shall then, in a column prepared thereon, in the same line of the name of the voter, mark "Voted," or the letter "V." If such person so registered shall be challenged as disqualified, the party challenging shall assign

25766

his reasons therefor, and thereupon one of said judges shall administer to him an oath to answer questions; and if he shall take said oath, he shall then be questioned by said judge or judges touching such cause of challenge, and touching any other cause or disqualification. And he may also be questioned by the person challenging him in regard to his qualifications and identity. But if a majority of the judges are of the opinion that he is the person so registered and a qualified voter, his vote shall then be received accordingly. But if his vote be rejected by such judges, such person may afterward produce and deliver an affidavit to such judges, subscribed and sworn to by him before one of said judges, in which it shall be stated how long he has resided in such precinct, county or city and state, that he is a citizen of the United States, and is a duly qualified voter in such precinct, and that he is the identical person so registered; also supported by an affidavit of a registered voter who is a householder residing in such precinct, stating his own residence, and that he knows such person, and that he does reside at the place mentioned, and has resided in such precinct, county and state for the length of time as stated by such person, which shall be subscribed and sworn to in the same way; whereupon the vote of such person shall be received and entered as other votes. But such clerks and judges having charge of such registers shall state in their respective books the facts in such case, and the affidavits so delivered to said judges shall be preserved and returned to the office of the commissioners of election. Blank affidavits of the character aforesaid shall be sent out to judges of all precincts, and the judges of election shall furnish the same on demand, and administer the oath without criticism. Such oaths, if administered by any other officer than such judge of election, shall not be received. (Laws 1895, p. 5, Extra Session.)

SEC. 7315. **None but those registered shall vote.**—The vote of no one shall be received by said judges whose name does not appear upon said register as a qualified voter. (Laws 1895, p. 5, Extra Session.)

SEC. 7316. **Challengers, how selected—their rights and duties.**—At every registration and election, each of the political parties shall have the right to designate and keep a challenger at each place of registration, revision of registration and voting, who shall be assigned such position immediately adjoining the judges of election, inside the polling or registration booth, as will enable him to see each person as he offers to register or vote, and who shall be protected, in the discharge of his duty, by the judges of election and

the police. And authority signed by the recognized chairman or presiding officer of the chief managing committee of a party in any such city, shall be sufficient evidence of the right of the challenger for such party to be present inside the rooms where the ballot-box is kept. But in case any challenger does not or cannot produce the authority of such chairman, it shall be the duty of such judges of election to recognize a challenger that shall be vouched for and presented to them by the persons present belonging to such political party, or who shall be vouched for by the judge representing such party. The chairman of the managing committee of each political party for such city may remove any challenger appointed by him, and substitute another in his place. The challenger so appointed and admitted to the room where such ballot-box is kept shall have the right and privilege of remaining during the canvass of the votes, and until the returns are duly signed and made. Each political party shall also have the right to a challenger placed conveniently outside of the polling booth, but not in the way of the voters. In addition to such challenger, each of the political parties casting votes at such poll, at the close of the polls shall have the right to the admission of two persons of their political faith into the room where such ballots are to be canvassed, to watch such canvass, which watchers may be selected as above prescribed in case of challengers; and in the absence of such selection, it shall be the duty of the judges of such election to admit into such room two persons of each political party so voting at such election, and who shall be vouched for by the judge or judges representing such political party, to be present during the canvass of such votes and the making of such returns; that such persons shall be of good character and sober, and shall in nowise interfere with such canvass. The police shall in no manner interfere with the entrance of such watchers into such room, but they shall keep order; and in case of any disorderly conduct on the part of any bystanders or watchers, it shall be the duty of the police, upon request of the judges, to exclude such persons from such room, and upon such watcher or watchers being excluded from such room, the judge or judges representing the same political party as the rejected watcher may select other watchers in their stead. (Laws 1895, p. 5, Extra Session.)

SEC. 7317. **Judges to be peace officers.**—Said judges of election shall have authority to keep the peace, and to cause any person to be arrested for any breach of the peace or for any breach of election laws, or any interference with the progress of such election or of the canvass of the ballots, and it shall be the duty of all officers of the

25767

law present to obey the order of such judges of election; and an officer making an arrest by the direction of the judges shall be protected in making such arrest. (Laws 1895, p. 5, Extra Session.)

SEC. 7318. **Vote, how canvassed.**—As soon as the poll of an election shall have been finally closed, the judges of election, in their several precincts, shall immediately, and at the same place of the poll, proceed to canvass the vote so cast. Such canvass shall not be adjourned or postponed until it shall have been fully completed, nor until the several statements hereinafter required to be made by the judges and clerks shall have been made out and signed by them. The judges of election shall have the right to station one or more police officers, or officers of the peace, at such entrance to the room where such canvass is begun or about to take place, to exclude disorderly persons and to keep the peace. The challengers present, and the watchers of such canvass, shall be allowed to be present, and so near that they can see that the judges and clerks of said election are faithfully performing their duties. No judge of election or police or other officer shall allow such person to be molested or removed during the canvass of such ballots, nor until such statements have been made, completed and signed, unless he shall be personally guilty of fraudulent or disorderly conduct. (Laws 1895, p. 5, Extra Session.)

SEC. 7319. **Ballots, how counted.**—The judges of election shall first count the whole number of ballots in the box. If the ballots shall be found to exceed the number of names entered on each of the poll-lists, they shall reject the ballots, if any, found folded inside of a ballot; and if the ballots and the poll-lists still do not agree after such rejection, they shall reject all ballots not numbered as required by section 7314 of this article, and no ballot not so numbered shall be counted. The ballots so rejected shall be enclosed in an envelope marked "rejected ballots," and returned with the ballot-boxes to the board of election commissioners; and, the ballots or poll-list agreeing or being made to agree in this way, the board shall proceeed to count the vote in the following manner: Said judges shall open the ballots and place those which contain the same names together, so that the several kinds shall be in seperate piles or on separate files. Each of the judges shall examine the separate files which are, or are supposed to be, alike and exclude from such files any which may have a name or an erasure, or in any manner shall be different from the other of such file. One of said judges shall then take one file of the kind of ballots which contain the same names and count them by the tens, carefully examining each name on each of said ballots. Such judge

shall then pass the ten ballots aforesaid to a judge of the opposite political party, who shall count them in the same manner. One of the remaining judges, in the presence and under the view of the other judge, shall then call the names of the persons named in the ten ballots, and the officers for which they are designated, and the poll-clerks shall tally ten votes for each of such persons. When said judges shall have gone through such file of ballots containing the same names by tens in that way, and when the poll-clerks shall have tallied all the votes by tens for each of such persons, they shall then take up the next file of ballots containing the same names, and shall count them by tens in the same way, and shall call the names of the person named in said ballots and the offices for which they are designated, and the tally-clerks shall tally the votes by tens for each of said persons, in the same manner as in the first instance. When the counting of each file of ballots which contain the same names shall be completed, the poll-clerks shall compare their tallies together and ascertain the total number of ballots of that kind so canvassed. And when they agree upon the number, one of them shall announce it in a loud voice to the judges. The said judges shall then canvass the other kind of ballots which do not correspond, those containing names partly from one kind of ballots and partly from another, being those usually called "split tickets," and those from which the name of the person proper to be voted for on such ballots has been omitted or erased, usually called "scratched tickets." They shall be canvassed separately by one of the judges, which judge shall call each name to the poll-clerks, and the office for which it is designated; and with the judges of the opposing political party looking at the ballot at the same time, and the poll-clerk making tally of the same. When all the ballots have been canvassed in this manner, the poll-clerks shall compare their tallies together, and ascertain the total number of votes received by each candidate, and when they agree upon the numbers, one of them shall announce in a loud voice to the judges the number of votes received by each candidate on each of the kinds of ballots containing his name, the number received by him on the split and scratched tickets, and the total number of votes received by him. (Laws 1895, p. 5, Extra Session.)

Sec. 7320. **Disposition of counted ballots.**—Each batch of ten ballots counted by the judges of election shall, as soon as counted, read and tallied, be strung upon a strong string, thread or twine, in the order in which they have been read; and each batch shall thus be disposed of before the commencement of the count as to the next batch. (Laws 1895 p. 5, Extra Session.)

25768

SEC. 7321. **Vote on propositions submitted canvassed, how.**—Whenever any proposition is submitted to a vote of the people, and is printed or written upon the same ticket with the names of candidates for an office, the names, together with such proposition, shall be canvassed in the following manner: All the ballots shall be first separated into three piles, the first pile containing all the ballots in favor of such proposition; the second pile containing all the ballots against such proposition; and the third pile containing all the ballots not mentioning such proposition, or being neither for nor against such proposition. Each of the judges shall then examine each pile and see that the separation has been properly made. Then the first pile shall be counted by tens and the result announced to the clerk, who shall tally the same by tens; and so the second pile shall be counted, announced and tallied, and likewise the third pile, if necessary; whereupon, the clerks shall announce to the judges the number of votes for, and the number of votes against, such proposition. The ballots for or against any proposition submitted shall always be canvassed, counted and tallied before the names of candidates for any office are canvassed, counted or tallied. (Laws 1895, p. 5, Extra Session.)

SEC. 7322. **Headings for tally-sheets.**—If the tally-sheets and returns should contain no heading for any proposition submitted, it shall be the duty of the clerks to write into such tally-sheets and returns the headings necessary in order to keep a correct tally, and to make a correct and accurate return; and it shall be the legal duty of the clerks and judges of election to make a true count and correct return of all votes upon any such proposition; and any willful failure or neglect of any judge or clerk to do so shall constitute a felony, and on conviction, such judge or clerk shall be sent to the penitentiary for not less than three nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7323. **Proclamation of result of election, etc.—ballots to be returned to commissioners—duty of commissioners.**—When the canvass of the ballots shall have been completed, and the poll-clerks shall have announced to the judges the total number of votes received by each candidate, a judge of election of each political party in return shall then proclaim in a loud voice the total number of votes received by each of the persons voted for in such precinct, as shown by the tally-sheets, and the office for which he is designated, and the number of votes for and the number of votes against any proposition which shall have been submitted to a vote of the people. Such proclamation shall be *prima facie* evidence of the result of the canvass of such ballots. Immediately after making such

proclamation and before separating, the judges shall fold in two folds, and string closely upon a single piece of flexible wire, all ballots which have been counted by them, except those marked "objected to," "defective" or "rejected," unite the ends of such wire in a firm knot, seal the knot in such manner that it cannot be untied without breaking the seal, enclose the ballots so strung in an envelope, on which shall be indorsed, in writing or print, the number of the precinct and the date on which such election was held, and securely tie and seal such envelope with official wax impression seals, to be provided for the judges, in such manner that it cannot be opened without breaking the seals, and return said ballots, together with the package containing the ballots marked "defective," "objected to," or "rejceted," in such sealed package or envelope to the board of election commissioners. Two of said judges, of opposite politics, shall, immediately after signing the statement of the result of the canvass and the tally-sheets, and the sealing of the ballot-box, go together to the office of the board of election commissioners and deliver said ballots to said election commissioners, who shall keep their office open until all of said ballots have been received. Immediately upon receiving said ballots, said election commissioners shall give a receipt therefor, and shall place them, properly arranged in the order of precinct numbers, in boxes which shall be securely locked, and the keys of all such boxes shall be given to one of said election commissioners; said boxes shall then be placed in a vault having a double lock, and said vault shall be locked, and one key thereof shall be taken and kept by each of the election commissioners not having the keys to the boxes containing the ballots: *Provided,* that the commissioners having the keys to said vault shall be of opposite political parties; said board of election commissioners shall securely keep said ballots for twelve months, not opening or inspecting them themselves nor allowing any one else to do so, except upon order of court in case of contested elections, or when it shall be necessary to produce them at the trial of any offense committed under this article. At the end of twelve months after said election, said ballots shall be destroyed: *Provided,* that if any contest of the election of any officer voted for at such election, or prosecution under this article, shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined. In all cases of contested elections, the parties contesting the same shall have the right to have said ballots opened and counted, and to have all errors of the judges in counting or refusing to count any ballot corrected by the court or body trying such contest. (Laws 1895, p. 5, Extra Session.)

25769

SEC. 7324. **Certificate to be made by judges and clerks—disposition of.**—The said judges of election shall make quadruple statements of the result of the canvass, one of which shall be written, or partly written and partly printed, in each of the poll-books used at such election. Each of the statements shall contain a caption stating the day on which, and the number of the election precinct and the ward, city and county in relation to which such statement shall be made, and the time of opening and closing of the polls of such precinct. It shall also contain a statement showing the whole number of votes given for each person, designating the office for which they were given, which statement shall be written, or partly written and partly printed, in words at length; also the number of rejected ballots and the cause of such rejection; and in case a proposition of any kind has been submitted to a vote at such election, such statement shall also show the number of votes cast for or against such proposition, written out or partly written and partly printed in words at length, and at the end thereof a certificate that such statement is correct in all respects; which certificate, and each sheet of paper forming part of the statement, shall be subscribed by the said judges and election clerks. If any judge or election clerk shall decline to sign such returns, he shall state his reasons therefor, in writing, and a copy thereof signed by himself shall be enclosed with each return. Each of the statements, except the one contained in each of the poll-books, shall be enclosed in an envelope, which shall then be securely sealed with sealing wax, or other adhesive material; and each of the judges and each of the election clerks shall write his name across every fold at which the envelope, if unfastened, could be opened. One of the envelopes shall be directed to the circuit clerk and one to the comptroller of the city, or to the officer of such city whose duties correspond with those of comptroller. Each set of tallies shall also be signed by the election clerks and the judges of election, and each shall be enclosed in an envelope, securely sealed and signed in like manner; and one of the envelopes shall be directed on the outside to the election commissioners and the other to the city register, if there be one, and if not, to the city clerk. On the outside of every envelope shall be indorsed whether it contains the statement of the votes cast or the tallies, and for what precinct and ward. (Laws 1895, p. 5, Extra Session.)

SEC. 7325. **Disposition of poll-books, ballot-boxes, etc.** The poll-books which contain two of the several statements or returns shall be placed in the ballot-box, and the ballot-box shall then be locked and the key removed; whereupon, said judges of election shall

all write their names upon a strip of paper of sufficient length for the following purposes: Said strip of paper, after the signing of their names thereon by said judges, shall then be pasted over the key-hole in the said ballot-box, and extending upward to the upper lid of the box and carried for some distance over the top, and it shall be placed in such a way that the signatures of said judges shall extend across the place of the opening of the lid of the box, so that when the box is opened it shall tear such paper and destroy the signatures written thereon, and so that when the key shall be inserted in the key-hole it will tear the paper so pasted over the key-hole. Such paper shall be fastened with sealing-wax, or some other adhesive material, which will not permit the removal of such slip of paper without defacing the same. (Laws 1895, p. 5, Extra Session.)

SEC. 7326. **Ballot-boxes, etc., to be delivered to commissioners**—Thereupon, one of the judges of election shall take charge of said ballot-box and its contents so enclosed, and one of the judges, who shall represent the opposite political party from the one taking the ballot-box, shall receive and hold the key thereto. The two judges who do not have charge of the ballot-box shall each take one of the statements of the votes cast into his possession, sealed up in envelopes as aforesaid, and each of the clerks shall take one of the tally-sheets, sealed up in the envelope as aforesaid. Thereupon, and at once, the judge having possession of such ballot-box shall deliver the same, with the contents as aforesaid, to the board of election commissioners, with the seal unbroken, and shall receive a receipt therefor; and at the same time the judge having possession of such key shall deliver the same to said board of commissioners and receive a receipt therefor, and the two judges not having possession of the ballot-box, and the two clerks, shall each, before 12 o'clock of the next day after such election, deliver the statements and tallies so in their possession, respectively, to the respective officers to whom addressed, as aforesaid, and who, by this article, are entitled to receive the same, and, when delivered, each one shall take a receipt from the officer to whom delivered: *Provided,* that the clerk having the envelope addressed to the election commissioners shall deliver the same to said commissioners immediately upon the completion of the canvass; and none of them shall receive pay for their services as such judges or clerks, without the production of the receipts so given them by the officers aforesaid. It shall be the duty of the respective officers so designated, to whom such statements and tallies are ordered to be delivered, to receive the same, and to safely keep under lock and key

25770

until ordered to be surrendered as hereinafter provided. (Laws 1895, p. 5, Extra Session.)

SEC. 7327. **Duty of commissioners with reference to ballot-boxes, etc.**—The said board of election commissioners, upon the receipt of said ballot-box, and key thereto, shall note the condition of the seal or stamp on said box, and enter the fact touching the same upon a book to be kept by them, together with the name of the officer who returned such ballot-box. They shall thereupon open said ballot-box and remove the poll-books containing the returns of the votes cast, and note upon the same memorandum book their condition, and shall put them in a secure place under lock and key, to which the public, in no event, shall have access. (Laws 1895, p. 5, Extra Session.)

SEC. 7328. **Penalty for failure to deliver ballot-boxes to commissioners.**—If any judge or judges or clerk taking the ballots, ballot-box, statements, tallies or poll-books, to be delivered to the board of election commissioners, shall fail to deliver the same to said board of election commissioners within two hours after the close of the canvass of the votes as aforesaid, or shall fail or refuse to comply with the provisions of this article, he or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than $25 nor more than $500, or imprisoned in the county or city jail not more than six months, or by both such fine and imprisonment. (Laws 1895, p. 5, Extra Session.)

GENERAL CANVASS.

SEC. 7329. **Duty of canvassing board.**—Within eight days after the close of such election, the board of election commissioners, who are hereby declared a canvassing board for such city, shall publicly open all the returns left respectively with the election commissioners, the circuit clerk and city comptroller, and shall make abstracts or statements of the votes in the following manner, as the case may require, viz.: All votes for governor and lieutenant-governor on one sheet; all votes for other state officers on another sheet; all votes for presidential electors on another sheet; all votes for representatives to congress on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for judges of the circuit court on another sheet; all votes for senators and representatives to the general assembly on another sheet; all votes for county officers on another sheet; all votes for city officers on another sheet; all votes for township officers on another sheet, and all votes for any other officer on a separate and appropriate sheet; all votes for and all votes against any

proposition which may be submitted to a vote of the people on another sheet. (Laws 1895, p. 5, Extra Session.)

SEC. 7330. **Announcement and certification of results of elections.**—It shall be the duty of such board of canvassers to canvass, add up and declare the result of every election hereafter held within the boundaries of such city, and certify the same to the county court, and in cities not within a county to the circuit court; and the county court, and in cities not within a county, the circuit court, shall thereupon enter of record such abstracts and results, and a certified copy of such record shall thereupon be filed with the county clerk of said county, and in cities not within a county, with the clerk of the circuit court; and such abstract or results shall be treated by said clerk, in all respects, as if made by the canvassing board now provided by law, and he shall transmit the same to the secretary of state, or other proper officer, as required by law; and such abstract or results so entered and declared by such court, and a certified copy thereof, shall be treated everywhere within the state, and by all public officers, with the same binding force and effect as the abstract of votes now authorized by the general law of the state. (Laws 1895, p. 5, Extra Session.)

SEC. 7331. **Certificates of election—county or circuit clerk to issue.**—The county clerk, and in cities not within a county, the circuit clerk, shall make out a certificate of election to each person having the highest number of votes for the several county, city and township offices, including members of the general assembly, whose district lie partly in the city and partly in the county, and deliver such certificate of election to the person entitled to it on his application. (Laws 1895, p. 5, Extra Session.)

SEC. 7332. **Certificates of election—duty of circuit and county clerks.**—The circuit clerk, and in cities within a county, the county clerk, shall make out a certificate of election to each of the persons having the highest number of votes, as declared by the order of said court, for the several city and township offices within such city, including members of the general assembly whose district are wholly within said city, and including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it, on his application. (Laws 1895, p. 5, Extra Session.)

SEC. 7333. **Duty of board of canvassers where there are indications of fraud.**—If, upon opening the various returns so made by the board of canvassers aforesaid, there shall be anything to indicate that a change has been made in such returns since

25771

gning the same by the judges or clerks or of any frauds in any re-
ect touching such returns it shall then be the duty of said canvass-
g board to have all the tallies opened and examined. If there shall
en be any doubts as to the genuineness of such returns for any pre-
ct, and as to the actual vote as originally returned, and the truth
specting the same remain uncertain, it shall be the duty of said
anvassers to examine any person or persons who were present at the
me of the proclamation so made by the judges of election in such
recinct, about which any doubt may arise, and the board shall be
rmitted to place such parties or witnesses under oath and examine
hem touching the same, and it shall be their duty to call such parties
ho were present at the time of such proclamation to come before
hem, and a subpoena may be issued by the circuit court, under the
irection of said board compelling any such witnesses to come before
uch board and give their evidence touching the matter in contro-
ersy; and thereupon it shall be the duty of said board to declare the
esult of the vote in any such precinct in regard to which any question
arises, in the same manner as it was proclaimed by the judges of elec-
ion after the canvass by them in such precinct, which results when so
declared, shall be binding and conclusive, except in case of an election
contest. (Laws 1895, p. 5, Extra Session.)

OFFENSES.

SEC. 7334. **Offenses against registration and election laws punished, how.**—If, at any general registration of voters, or any of the meetings of the judges of election held for such purpose, or for revision thereof, as provided in this article, any person shall falsely personate an elector or other person, and register or attempt or offer to register in the name of such elector or other person;

Or if any person shall knowingly or fraudulently register, or offer or attempt to make application to register, in or under the name of any other person, or in or under any false, assumed or fictitious name, or in or under any name not his own;

Or shall knowingly or fraudulently register in two election precincts;

Or, having registered in one precinct, shall fraudulently attempt or offer to register in another;

Or shall fraudulently register, or attempt or offer to register, in any election precinct, not having a lawful right to register therein;

Or shall knowingly or willfully do any unlawful act to secure registration for himself or any other person, or shall knowingly, willfully or fraudulently, by false personation or otherwise, or by any unlawful means, cause or procure, or attempt to procure, the name of any quali-

fied voter, in any election precinct, to be erased or stricken from any registry of voters of such precinct, made in pursuance of this article or otherwise, as in this article provided;

Or by force, threat, menace, intimidation, bribery, reward, or offer or promise thereof, or other unlawful means, prevent, hinder or delay any person having a lawful right to register, or be registered, from duly exercising such right;

Or shall knowingly, willfully or fraudulently solicit, compel or induce, or attempt or offer to solicit, compel or induce, by such means or any unlawful means, any judge of election or other officer of registration in any election precinct, to register, or admit to registration, any person not lawfully entitled to registration in such precinct;

Or to register any false, assumed or fictitious name, or any name of any person except as provided in this article;

Or shall knowingly or willfully or fraudulently interfere with, hinder or delay any judge of election, or other officer of registration in the discharge of his duties, or counsel, advise or induce, or attempt to induce, any such judge or other officer to refuse or neglect to comply with or to perform his duties, or to violate any law prescribed for regulating the same;

Or shall aid, counsel, procure, solicit or advise any voter, person, judge of election or other officer of registration to do any act by law forbidden, or in this article constituted an offense, or to omit to do any act by law directed to be done;

Or if any judge or clerk of election shall, at any registration of voters, knowingly and willfully misspell the name of any person who applies to register when he writes said name on the registry book, or shall write therein a name other than the one given him by the applicant, instead of said name, or shall under the column "Residence" on the line with any applicant's name, enter any street or number other than that given him by said applicant, or shall fail or neglect to enter in said column the street and number and the designation of the house or room, as given him by said applicant;

Every such person, upon conviction thereof, shall be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7335. **Impersonation and other crimes.**—If, at any election hereafter held in any such city, any person shall falsely personate any elector or other person, and vote, or attempt or offer to vote in or upon the name of such elector or other person;

25772

Or shall vote, or attempt to vote, in or upon the name of any other person, whether living or dead, or in or upon any false, assumed or fictitious name, or in or upon any name not his own;

Or shall knowingly, willfully or fraudulently vote more than once for any candidate for the same office except as authorized by law;

Or shall vote or attempt or offer to vote in any election precinct without having a lawful right to vote therein;

Or vote more than once, or vote in more than one election precinct;

Or, having once voted, shall vote or attempt to offer to vote again;

Or shall knowingly, willfully or fraudulently do any unlawful act to secure a right or an opportunity to vote for himself or for any other person to vote;

Or shall by force, threat, menace, intimidation, bribery or reward, or offer or promise thereof, or otherwise unlawfully, either directly or indirectly influence or attempt to influence any elector in giving his vote;

Or prevent or hinder, or attempt to prevent or hinder, any qualified voter from freely exercising the right of suffrage;

Or, by any such means, induce or attempt to induce any such voter to exercise any such right;

Or shall by any such means or otherwise compel or induce or attempt to compel or induce any judge of election or other officer of election, in any election precinct, to receive the vote of any person not legally qualified or entitled to vote at the said election in such precinct;

Or shall knowingly, willfully or fraudulently interfere with, delay or hinder, in any manner, any judge of election, poll-clerk or other officer of election in the discharge of his duties;

Or by any such means, or other unlawful means, knowingly, willfully or fraudulently counsel, advise, induce or attempt to induce any judge of election, poll-clerk or other officer of election whose duty it is to ascertain, proclaim, announce or declare the result, of any such election, to give or to make any false certificate, document, report, return or other false evidence in relation thereto;

Or to refuse or neglect to comply with his duties, or to violate any law regulating the same, or to receive the vote of any person in any election precinct not entitled to vote therein;

Or to refuse to receive the vote of any person entitled to vote therein;

Or shall aid, counsel, advise, procure or assist any voter, judge or other officer of election, or any person whomsoever, to do any act by law forbidden or in this article constituted an offense;

Every such person shall, upon conviction thereof, be adjudged guilty of a felony, and shall be punished for each and every such offense by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7336. **Punishment of clerks.**—If any election clerk or poll-clerk, or any judge of election performing the duties of poll-clerk, or other person performing such duties, shall willfully keep a false poll-list;

Or shall knowingly insert in his poll-list any false statement of any name or statement, or any check, alteration or mark, except as in this article provided, he shall upon conviction thereof, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7337. **Punishment of judges.**—Every judge of election who shall willfully exclude any vote duly tendered, knowing that the person offering the same is lawfully entitled to vote at such election;

Or shall willfully receive a vote from any person who has been duly challenged in relation to his right to vote at such election, without complying with the provisions of this article;

Or shall willfully omit to challenge any person offering to vote whom he knows not to be entitled to vote, and who has not been challenged by any other person;

Or shall deposit any ballot in the ballot-box without first numbering the same, as required by this article, he shall, upon conviction thereof be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7338. **Judges, clerks and canvassers guilty of felony, when.**—Every judge of election, member of any board of canvassers, poll-clerk or other officer authorized to take part in or perform any duty in relation to any canvass or official statement of the votes cast at any election in any precinct or in any city, who shall willfully make any false canvass of such votes;

Or shall make, sign, publish or deliver any false return of such election, or any false certificate or statement of the result of such election, knowing the same to be false;

Or who shall willfully deface, destroy or conceal any statement, tally or certificate entrusted to his care or custody;

Shall, on conviction thereof, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less that two years nor more than five years. (Laws 1895, p. 5, Extra Session.)

25773

SEC. 7339. **Punishment of other persons.**—If any person other than a judge of election, shall, at any such election, knowingly and willfully put or cause to be put any ballot or ballots, or other paper having the semblance thereof, into any box used at such election for the reception of votes;

Or if any such judge of election shall knowingly and willfully cause or permit any ballot or ballots to be in said box at the opening of the polls, and before the voting shall have commenced;

Or shall knowingly, willfully or fraudulently put any ballot or other paper having the semblance thereof, or cause or permit any ballot, or other paper having the semblance thereof, to be put into any such box at any such election, unless the same shall be offered by an elector, and his name shall have been found and kept upon the registry, as hereinbefore provided, or who shall be entitled to vote under this article;

Or if any such judge of election, or other officer or person, shall fraudulently, during the canvass of the ballots, in any manner change, substitute or alter any ballot taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed;

Or shall remove any ballot, or semblance thereof, from, or add any ballot or semblance thereof to, the ballots taken from the ballot-box then being canvassed, or from any ballot-box which has not been canvassed;

Every such person shall, upon conviction thereof, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than two years nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7340. **Election or registration officers guilty of felony—penalty.**—If any judge of election, poll-clerk or other officer of registration, revision, election or canvass, of whom any duty is required in this article, or by the election laws of this state, so far as the same are consistent with the provisions of this article, shall be guilty of any corrupt or fraudulent conduct or practice in the execution of the same, he shall, on conviction thereof, unless the punishment thereof is in this article otherwise prescribed, be adjudged guilty of a felony, and shall be punished by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7341. **Frauds of officers—penalty.**—Every commissioner of elections, judge of election, poll-clerk or other officer or person having the custody of any record, registry of voters or copy there-

of, oath, return or statement of votes, certificate, poll-list, or of any paper, document or vote of any description in this article directed to be made, filed or preserved, who is guilty of stealing, willfully destroying, mutilating, defacing, falsifying or fraudulently removing or secreting the whole or any part thereof;

Or who shall fraudulently make any entry, erasure or alteration therein, except as allowed and directed by the provisions of this article;

Or who permits any other person so to do,

Shall, upon conviction thereof, be adjudged guilty of a felony, and shall be punished for each and every such offense by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7342. **Procuring or abetting fraud a felony—penalty.**—Every person not an officer, such as is mentioned in the last preceding section, who is guilty of any of the acts specified in said last section, or who advises, procures or abets the commission of the same or any of them, shall, upon conviction thereof, be adjudged guilty of a felony, and for each and every such offense shall be punished by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7343. **False swearing—penalty.**—Any person who shall be convicted of willfully and corruptly swearing or affirming in taking any oath or affirmation prescribed by or upon any examination provided for in this article shall be adjudged guilty of willful and corrupt perjury, and shall be punished according to the laws of the state. (Laws 1895, p. 5, Extra Session.)

SEC. 7344. **Instigating false swearing—penalty.**—Every person who shall willfully and corruptly instigate, advise, induce or procure any person to swear or affirm falsely, as aforesaid, or attempt or offer to do so, shall be adjudged guilty of subornation of perjury and shall, upon conviction thereof, suffer the punishment directed by law in cases of willful and corrupt perjury. (Laws 1895, p. 5, Extra Session.)

SEC. 7345. **Fraudulent changing or substituting ballot—penalty.**—If any person shall fraudulently change or alter the ballot of any elector, or substitute one ballot for another, or fraudulently furnish any elector, with a ballot containing more than the proper number of names, or shall intentionally practice any fraud upon any elector to induce him to deposit a ballot as his vote, which shall be thrown out and not counted, or otherwise willfully defraud

25774

him of his vote, every such person shall, upon conviction thereof, be adjudged guilty of a felony, and shall be punished with imprisonment in the penitentiary for not less than two nor more than five years, or imprisonment in the city or county jail not less than six months nor more than one year. (Laws 1895, p. 5, Extra Session.)

SEC. 7346. **Convicts voting—penalty.**—If any person who shall have been convicted of bribery, felony or other infamous crime, under the laws of any state, and who has never received the pardon for such offense from the officer entitled to grant such pardon, shall thereafter vote, or offer to vote, at any election in such city, he shall, upon conviction thereof, be adjudged guilty of a felony, and for each and every such offense shall be punished by imprisonment in the penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7347. **Disobeying lawful commands of registration or election officer—penalty.**—If any person shall willfully disobey any lawful command of any judge of election, or of any board of registry, given in the execution of his or their duty as such at any election or registration, he shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county or city jail for not less than thirty days nor more than one year, or by a fine not less than two hundred and fifty nor more than one thousand dollars, or by both such fine and imprisonment. Any misdemeanor under this article for which no penalty is specially provided shall be punished as provided in this section. (Laws 1895, p. 5, Extra Session.)

SEC. 7348. **Interference with duties of officers, etc.—penalty.**—If, at any general registration of voters or revision thereof, or on any day of election, or during the canvass of the votes cast thereat, any person shall cause any breach of the peace, or be guilty of any disorderly conduct, violence or threats of violence, whereby any such registration, revision, election or canvass shall be impeded or hindered;

Or whereby the lawful proceedings of any judge of election, or board of registration, or poll-clerk or other officer of such election, or challenger, or person designated to be present at the canvass of any ballots, as hereinbefore provided, is interfered with;

Every such person shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year, or by a fine of not less than two hundred and fifty dollars nor more

than one thousand dollars, or by both such fine and imprisonment. (Laws 1895, p. 5, Extra Session.)

SEC. 7349. **Assaulting judges or clerks, etc.—penalty.** If any person, knowingly or willfully, shall obstruct, hinder or assault, or by bribery, solicitation or otherwise interfere with any judge of election, poll-clerk, challenger or person designated as provided in this article to be present at the canvass of any ballots in the performance of any duty required of him, or which he may by law be authorized or permitted to perform;

Or if any person, by any of the means before mentioned or otherwise, unlawfully, shall, on the day of registration, revision of registration or of election, hinder or prevent any judge of election, poll-clerk, challenger or person designated as provided in this article to be present at the canvass of ballots, in his free attendance and presence at the place of registration or revision of registration, or of election, in the election precinct in and for which he is appointed or designated to serve;

Or in his full and free access and egress to and from any such place of registration, revision of registration, or of election;

Or to or from any room where such registration, revision of registration or election, or canvass of votes, or making of any return or certificates thereof, may be had;

Or shall molest, interfere with, remove or eject from any such place of registration or poll of election, or of canvassing ballots cast thereat, or of making returns or certificates thereof, any such judge of election, poll-clerk, challenger or person designated, as provided in this article to watch the canvass of any ballots, except as otherwise provided in this article, or shall unlawfully threaten or attempt or offer so to do;

Every such person shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by imprisonment in the county or city jail for not less than six months nor more than one year, or shall be fined not less than two hundred nor more than one thousand dollars, or both. (Laws 1895, p. 5, Extra Session.)

SEC. 7350. **Destroying, concealing or removing ballot-boxes or ballots a felony—penalty.**—If any person, upon the day of such election, or before the canvass of votes is completed, shall conceal or willfully break or destroy any ballot-box used or intended to be used at such election;

Or shall willfully or fraudulently conceal, secrete or remove any such box from the custody of judges of election; or shall alter, deface,

25775

injure, destroy or conceal any ballot which has been deposited in any ballot-box at such election which has not been counted or canvassed; or poll-list used at such election; or any report, return, certificate or other evidence in this article required, as provided for;

Every such person shall, on conviction thereof, be adjudged guilty of a felony, and shall, for each and every such offense, be punished by imprisonment in the state penitentiary for not less than two nor more than five years. (Laws 1895, p. 5, Extra Session.)

SEC. 7351. **Illegal registration or canvassing by officers—penalty.**—If at any election precinct at any registration of voters or revision thereof, or at any election hereafter held in such city, any judge of election or poll-clerk shall knowingly or willfully admit any person to registration, or make any entry upon any register or poll-book, or receive any vote, or proceed with the canvass of ballots, or shall consent thereto, unless a majority of all the judges of election in such election precinct are present and concur, he shall, upon conviction thereof, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county or city jail for not less than thirty nor more than sixty days, or by a fine of not less than one hundred not more than one thousand dollars, or by both such fine and imprisonment. (Laws 1895, p. 5, Extra Session.)

SEC. 7352. **Judge absenting himself, etc.—penalty.**—If any judge of election in any election precinct shall, without urgent necessity, absent himself from the place of registration, or the polls of said precinct, upon any day of election, whereby less than a majority of all the judges in such election precinct shall be present during such hours of registration, election or canvass of ballots, he shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in the county or city jail for not less than sixty days nor more than one year, or shall be fined not less than five hundred nor more than one thousand dollars, or both. (Laws 1895, p. 5, Extra Session.)

SEC. 7353. **Judges and clerks not to electioneer—penalty.**—It shall be unlawful for any judge of election, poll-clerk, challenger or person designated as provided in this article, or any person or persons within the polling place, to electioneer for any candidate, party or proposition. Any violation of this section shall be a misdemeanor, and shall be punished by imprisonment in the county or city jail for not less than ten nor more than ninety days, or by a fine of not less than fifty nor more than one hundred dollars, or both. (Laws 1895, p. 5, Extra Session.)

SEC. 7354. **Offenses by police officers—penalty.**—If any police office shall, at any election precinct, intimidate, assault or drive away from the polls any duly qualified voter, or prevent, or attempt to prevent, any such lawful voter from exercising his elective franchise;

Or shall disobey any lawful order of a judge of election;

Or shall intimidate, assault or interfere with any judge of election, clerk of election, challenger or watcher in the performance of his duties, or willfully permit any other person to intimidate, assault or interfere with them or any of them; or, shall knowingly fail to arrest any one attempting to vote the second time at such precinct, after having voted once thereat;

He shall, upon conviction, be adjudged guilty of a felony, and be punished by imprisonment in the penitentiary for not less than two nor more than five years.

In addition thereto, the board of police commissioners of any city aforesaid, upon complaint being made to it that any officer has been guilty of any of the offenses aforesaid, shall cite said officer before the board for trial; said trial shall be public, upon oral testimony, and the board shall issue subpoenas for all witnesses required by said complainant and said defendant officer, and said board of police commissioners shall have power to compel the attendance of witnesses at said trial.

If, upon such trial, said officer shall be found guilty of any of the offenses aforesaid, he shall be summarily dismissed from the force; and upon sworn complaint being made to said board of police commissioners that any officer has been guilty of any of the offenses aforesaid, said board shall at once suspend said officer, and shall not reinstate him until after trial before said board and acquittal. (Laws 1895, p. 5, Extra Session.)

SEC. 7355. **Forfeitures to be paid into treasury.**—All forfeitures provided for in this article shall be recovered in the name of the board of election commissioners, and shall be paid, when collected, into the county or city treasury. (Laws 1895, p.5, Extra Session.)

SEC. 7356. **Irregularities no defense, etc.** — Irregularities or defects in the mode of noticing, convening, holding or conducting an election authorized by law shall constitute no defense to a prosecution for a violation of the provisions of this article. (Laws 1895, p. 5. Extra Session.)

SEC. 7357. **"Election" and "householder" defined.**—Every act which, by the provisions of this article or the general election laws, is made a crime when committed with reference to the elec-

on of a candidate, is equally criminal when committed with reference the determination of the question submitted to electors, to be de- ded by votes cast at an election. The word "election," as used in is article, shall be construed to designate elections had within any ty, for the purpose of enabling electors to choose some public officer officers under the laws of this state or the United States, or to pass ay amendement, law or other public act or proposition submitted to ote by law. The word "householder," as used in this article, shall ean the chief or head of a family, who resides with the family as a mily, and who supports and provides for such family as an inde- endent family. (Laws 1895, p. 5, Extra Session.)

SEC. 7358. **Fine and imprisonment for misdemeanor.**—n case of misdemeanor committed where a matter of fine shall be im- osed instead of imprisonment, such party shall be discharged from nprisonment only on condition of payment of the fine, and unless aid, imprisonment shall continue until such fine shall be canceled by n allowance of three dollars per day for each day of imprisonment. Laws 1895, p. 5, Extra Session.)

SEC. 7359. **Commissioners to aid in prosecuting of- enses.**—It shall be the duty of such election commissioners to aid in he prosecution of all crimes and offenses against this article, and hey shall keep a book in which shall be entered all complaints against ersons claimed to be guilty of the violation of this law, and when in he judgment of such election commissioners such offense has prob- bly been committed, it shall be their duty to cause a prosecution to be nstituted in accordance with the provision of this article, and cause he parties to be punished accordingly. (Laws 1895, p. 5, Extra Ses- ion.)

COMPENSATION.

SEC. 7360. **Commissioners and assistants paid, how— alaries.**—In all cities not within counties such election commis- ioners and assistants employed by the board of election commission- rs shall be paid by the city; in all other cities having a board of elec- ion commissioners, the salaries of such election commissioners and ssistants shall be paid one-half by the city and one-half by the coun- y. The members of such board shall each receive a salary of $2,500 er year, except in cities not within a county, where the salaries of the nembers designated as chairman and secretary, shall be $2,500 per ear, and the salary of the third member shall be $2,000 per year, all ayable monthly. The assistants employed by the commissioners shall eceive a salary of $4 per day for the time actually employed, payable nonthly. All expenses incurred by said board of election commis- ioners and all costs and expenses of registration and election in such

cities shall be paid one-half out of the citiy treasury and one-half out of the county treasury, except in cities not within a county, in which cities all shall be paid out of the city treasury, and all printing, binding, etc., shall be let by contract, subject to such regulations as are or may hereafter be prescribed by ordinance of any such city. (Laws 1895, p. 5, Extra Session, amended—e.)

SEC. 7361. **Pay of judges and clerks.**—All judges and clerks of election under this article shall be allowed and paid at the rate of three dollars per day. (Laws 1895, p. 5, Extra Session.)

SEC. 7362. **Number of days' service credited to judges and clerks.**—Each judge of election who has performed all the duties and services required of him by this article, at the general registration, and at the election following, shall be credited with five full days' services and no more; but at any election prior to which there is only an additional registration and revision, being a registration between the general registrations, he shall be credited with three full days' service and no more, in case he performs all the duties required of him by this article. At the elections held under this article where there is no additional registration or revision of registration each judge or clerk of election shall only be credited with one day's service each. When any judge or clerk does not perform all the services required by this article, then such board of election commissioners will audit his time, and shall allow him *pro rata* compensation. Each clerk of election, if he has performed all the services required of him by this article, at the general registration and at the election following shall be credited with seven days' services and no more; but at any election prior to which there was only an additional registration and revision, being a registration between the general registrations, he shall be credited with five full days' service and no more, in case he performs all the duties required of him by this article. (Laws 1895, p. 5, Extra Session.)

SEC. 7363. **City to pay judges and clerks, when.**—At all city elections, general or special, though other than city officers may be elected at the same time with such city officers, and at all special elections in any part of the city, at which a city officer is elected, such city shall pay such judges and clerks of election for their services under this article. (Laws 1895, p. 5, Extra Session.)

SEC. 7364. **County or city to pay judges and clerks, when.**—At all general, county and state elections which include officers elected through the whole county though other than state and county officers are also elected, and all special elections for a county

(e) 141 Mo. 45.

25777

or state officer or member of congress, or member of the legislature, such county, or city not within a county, shall pay such judges and clerks of election for their services under this article. (Laws 1895, p. 5, Extra Session.)

SEC. 7365. **Commissioners shall audit claims.**—Said board of election commissioners shall audit all the claims of judges and clerks of election, and all other claims under this article, and shall draw a warrant therefor upon such county or city treasury, as the case may be. (Laws 1895, p. 5, Extra Session.)

MISCELLANEOUS PROVISIONS.

SEC. 7366. **Jurats—commissioners and judges may administer oaths.**—All oaths in writing provided for in this article must have a jurat or certificate of the officer taking the same, attached and signed by him; and said election commissioners and said judges of election are hereby empowered to administer all oaths and affirmations required in the administration of the affairs of their several offices without charge therefor. (Laws 1895, p. 5, Extra Session.)

SEC. 7367. **Judges and clerks exempt from jury service.**—In cities having a jury commissioner, the board of election commissioners shall, immediately upon the confirmation of the appointments of judges and clerks, by the court, certify to said jury commissioner, the names and places of residence of all persons so confirmed, together with the date of expiration of the term of service of each as a judge or clerk of election; and upon receipt of such certificate said jury commissioner shall mark all such persons "exempt" upon his jury list, and shall not draw any of them as jurors during their term of service as such judges or clerks. (Laws 1895, p. 5, Extra Session.)

SEC. 7368. **Commissioners may be removed for misconduct.**—The said commissioners of election appointed by the governor may be removed by him upon notice for official misconduct, and the commissioner appointed by the mayor may be removed by the mayor for like cause. (Laws 1895, p. 5, Extra Session.)

SEC. 7369. **Office of recorder of voters abolished.**—All acts and parts of acts inconsistent with this article are hereby repealed, and the office of recorder and deputy recorder of voters in all the cities governed by the provisions of this article is hereby abolished. (Laws 1895, p. 5, Extra Session.)

## CITIZENSHIP.

CHAPTER 15.

SEC. 1991. **Conviction in what cases forfeits citizenship.**—Any person who shall be convicted of arson, burglary, robbery or larceny, in any degree, in this article specified, or who shall be sentenced to imprisonment in the penitentiary for any other crime punishable under the provisions of this article, shall be incompetent to serve as a juror in any cause, and shall be forever disqualified from voting at any election or holding any office of honor, trust or profit, within this state: *Provided,* that the provisions of this section shall not apply to any person who at the time of his conviction shall be under the age of twenty years: *Provided, further,* that in all cases where persons have been convicted under this act the disqualification provided may be removed by the pardon of the governor any time after one year from the date of conviction. (R. S. 1889, § 3624, amended—a.)

SEC. 2388. **Pardon, effect of.**—When any person shall be sentenced upon a conviction for any offense, and is thereby, according to the provisions of this law, disqualified to be sworn as a witness or juror in any cause, or to vote at any election, or to hold any office of honor, profit or trust within this state, such disabilities may be removed by a pardon by the governor, and not otherwise, except in the case in the next section mentioned. (R. S. 1889, § 3968—b.)

SEC. 2389. **Citizenship not lost, when.**—If such convict shall have committed the offense while within the age of eighteen years, and such conviction shall be for a first offense, all civil disabilities incurred shall be removed and his competency restored at the expiration of the term of imprisonment to which he shall have been sentenced. (R. S. 1889, § 3969.)

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## OFFENSES BY PERSONS IN OFFICE OR AFFECTING PUBLIC TRUSTS AND RIGHTS.

CHAPTER 15—ARTICLE VI.

SEC. 2084. **Bribing public officers—punishment.**—Every person who shall, directly or indirectly, give any money, goods, right in action or any other valuable consideration, gratuity or reward, or

(a) 79 Mo. 113; 82 Mo. 82; 91 Mo. 228.
(b) 79 Mo. 113; 91 Mo. 228.

25778

any promise, undertaking or security therefor, to any judge or justice of any court, justice of the peace, or to any member of the legislature, or to any officer or employe thereof, or to any other public officer of this state, or of any county or city, town or township thereof: First, with intent to influence his vote, opinion, judgment or decision on any question, matter, election, appointment, cause or proceeding, which may be then pending, or may by law be brought before him in his official capacity, or to induce him to neglect or omit the performance of any official duty, or to perform such duty with partiality or favor, or otherwise than is required by law; or, second, in consideration that any such officer or member of the legislature has given any vote, opinion, judgment or decision in any particular manner, or for any particular person, or upon any particular side, or more favorable to one side than the other, in any matter, question, election, cause or proceeding, or has omitted to perform any official act or duty, or has performed such act or duty with partiality or favor, or in anywise contrary to law, shall be deemed guilty of bribery, and be punished by imprisonment in the penitentiary for a term not exceeding seven years. (R. S. 1889, § 3716.)

SEC. 2085. **Officers accepting bribes — punishment.** — Every judge or justice of any court, justice of the peace, member of the legislature, or officer or employe thereof, and any other public officer of this state, or of any county or city, town or township thereof, who shall, directly or indirectly, accept or receive any gift, consideration, gratuity or reward, or any promise or undertaking to make the same: First, under any agreement that his vote, opinion, judgment or decision shall be given for any particular person, or in any particular manner, or upon any particular side, or more favorable to one side than the other, in any question, election, matter, cause or proceeding which may be pending or be brought before him in his official capacity, or that he shall neglect or omit to perform any official duty, or perform the same with partiality or favor, or otherwise than according to law; or, second, in consideration that he has given his vote, opinion, judgment or decision for any particular person, or in any particular manner, or upon any particular side, or more favorably to one side than the other, in any question, election, matter, cause or proceeding, or has neglected or omitetd to perform any official act or duty, or performed such act or duty with partiality or favor, or in anywise contrary to law, shall be deemed guilty of bribery, and punished as prescribed in the next preceding section. (R. S. 1889, § 3717.)

SEC. 2086. **Bribing officer to appoint to office, etc.**— Every person who shall, directly or indirectly, give or engage to give any sum of money or other valuable consideration, gratuity or reward,

to any officer: First, with intent to influence or induce such officer to give or procure for him or any other, by his act, interest, influence or other means whatever, any appointment, office or place of trust, or any preferment, or emolument, or assist, by any means whatsoever, to procure the same; or, second, in consideration of any office or appointment, preferment, or emolument, act, interest or influence, or any aid or assistance, in procuring or attempting to procure such appointment, office or place of trust, or any emoluments, shall, on conviction, be adjudged guilty of bribery, and punished by imprisonment in the penitentiary for a term not exceeding seven years. (R. S. 1889, § 3718—c.)

Sec. 2087. **Officer accepting bribe to make appointments, etc.**—Every officer who shall, directly or indirectly, accept or receive of another any sum of money or other valuable consideration, gratuity or reward, or any promise or security thereof: First, upon any agreement to give or procure by his act, interest or influence, or other means, any appointment, office or place of trust, or any preferment or emolument, or to aid or assist in procuring the same for another person; or, second, in consideration of any office or appointment, place or preferment, or emolument, or any act, interest or influence, aid or assistance, by any means, in procuring or attempting to procure any such appointment, office, place of trust, preferment or emolument, shall, on conviction, be adjudged guilty of bribery, and punished as prescribed in the next preceding section. (R. S. 1889, § 3719.)

Sec. 2088. **Accepting office procured by bribery.** – Every person who shall take, accept, receive or obtain, directly or indirectly, any office, appointment or place of trust, preferment or emolument, by the act, influence, aid or assistance of another, upon any agreement or consideration mentioned in either of the four preceding sections, and every person who shall take, accept or receive any aid or assistance in obtaining or attempting to obtain, or any promise or undertaking to procure such office, appointment, place of trust, preferment or emolument, for himself or another, shall be deemed guilty of bribery, and punished in the same manner as if he had received money upon a like agreement or consideration. (R. S. 1889, § 3720.)

Sec. 2089. **Attempting to bribe officer in cases mentioned in preceding sections.**—If any person shall, by any of the means mentioned in the preceding sections of this article, or otherwise, offer or attempt to bribe any officer or other person, in any of the cases hereinbefore mentioned, he shall, on conviction, be punished by imprisonment in the penitentiary for a period not exceeding five years, or by imprisonment in the county jail for a term not exceeding one year and a fine not less than one thousand dollars. (R. S. 1889, § 3721.)

(c) Indictment. 96 Mo 120.

25779

SEC. 2090. **Bribery to procure office.**—If any person shall, directly or indirectly, give or procure to be given, or engage to give, any money, gift or reward, or any office, place or employment upon any engagement, contract or agreement, that the person to whom, or to whose use, or on whose behalf, such gift or promise shall be made, shall, by himself or any other, procure or endeavor to procure the election of any person to any office, at any election by the electors, or any public body, under the constitution or laws of this state, the person so offending shall on conviction be adjudged guilty of bribery, and punished by imprisonment in the penitentiary for a term not exceeding five years. (R. S. 1889, § 3722.)

SEC. 2091. **Accepting bribe to procure office.** — Every person who shall, by himself or another, to his use or on his behalf, accept or receive any such money, gift or reward, office, place or employment, or any promise or security therefor, upon any such engagement, contract or agreement as specified in the preceding section, shall be adjudged guilty of bribery, and shall forfeit the full amount of such money, gift or reward, and shall, moreover, be punished by imprisonment in the penitentiary for a term not exceeding five years. (R. S. 1889, § 3723.)

SEC. 2092. **Accepting bribe by voter.**—If any person who shall have, or claim to have, a right to vote in any election authorized to be held by the constitution or laws of this state, shall ask, receive or take any money or other reward, by way of gift, loan or other device, or agree or contract for any money, gift, office, employment, or other reward whatsoever, to give his vote, or refuse or forbear to give his vote, in any such election, the person so offending shall, on conviction, be adjudged guilty of a misdemeanor. (R. S. 1889, § 3724.)

SEC. 2093. **Offering bribe to voter.**—If any person, by himself, or any person employed by him, shall, by any gift or reward, office or employment, or by any promise, agreement or security therefor, corrupt or procure, or attempt to corrupt or procure, any person who shall have or claim to have a right to vote at any election, to give or forbear to give his vote at such election, the person so offending shall, on conviction, be adjudged guilty of a misdemeanor. (R. S. 1889, § 3725.)

SEC. 2094. **Bidding for office.**—Any person, being a candidate for election to any office of honor, trust or profit, in this state, who shall offer or promise to discharge the duties of such office for a less sum than the salary, fees or emoluments of said office, as fixed by the laws of the state, or who shall promise to pay back or donate to any public or private interest any portion of such salary, fees or emoluments, as an inducement to voters at such election, shall on conviction

thereof be deemed guilty of a misdemeanor, and shall be fined in a sum of not less than fifty dollars nor more than five hundred dollars, or imprisonment in the county jail for a period of not less than ten days nor more than six months, or by both such fine and imprisonment, and shall in addition forfeit the office to which he may have been elected at such election. (R. S. 1889, § 3726—d.)

SEC. 2095. **Selling office.**—Every person holding or exercising any office or public trust under the constitution or laws of this state who shall, for any reward or gratuity or any valuable consideration, paid or agreed to be paid, directly or indirectly, grant, bargain or sell such office or any deputation thereof, or grant the right or authority to discharge any of the duties thereof to another, shall on conviction be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment. (R. S. 1889, § 3727.)

SEC. 2096. **Assessment of candidates.**—Any person or association of persons who shall assess, demand or receive, from any candidate for any state, county or municipal office, any sum or sums of money, or who shall attempt, carry out or participate in any fraud upon such candidate, in consideration of his or their influence, or for money, shall be deemed guilty of a misdemeanor, and adjudged guilty of a misdemeanor. Nothing herein shall be construed to prohibit candidates and others from voluntarily contributing influence and money for political purposes, or to prevent the regularly constituted campaign committees of political parties from making assessments for legitimate campaign expenses. (R. S. 1889, § 3728.)

SEC. 2097. **Buying office.**—Every person who shall give, or make any agreement to give, any money, property, right in action or other gratuity or reward, in consideration of any such bargain, grant or deputation of an office, or any part thereof, shall, upon conviction, be punished as prescribed in the last preceding section. (R. S. 1889, § 3729.)

SEC. 2098. **Preceding sections construed.**—Sections 2095 and 2097 shall not be construed to extend to the appointment of a deputy by any officer authorized by law to have a deputy, so that no gratuity or reward be paid or agreed to be paid for such deputation. (R. S. 1889, § 3730.)

SEC. 2099. **Grant of office void.**—Every grant or deputation of office made contrary to the foregoing provisions shall be void; but

(d) Unlawful for candidate for office to offer to perform duties of office for less than fees allowed by law. 72 Mo. 13.

25780

all officials acts done before conviction under this law by any deputy of an officer authorized to make such appointment shall be valid. (R. S. 1889, § 3731.)

SEC. 2100. **Oppression in office.**—Every person exercising or holding any office of public trust who shall be guilty of willful and malicious oppression, partiality, misconduct or abuse of authority in his official capacity or under color of his office, shall, on conviction, be deemed guilty of a misdemeanor. (R. S. 1889, § 3732—e.)

SEC. 2101. **Fraud in office.**—Every officer or public agent of this state, or of any county, who shall commit any fraud in his official capacity or under color of his office, shall be adjudged guilty of a misdemeanor. (R. S. 1889, § 3733—f.)

SEC. 2102. **Conviction, effect of.**—Every person who shall be convicted of any of the offenses mentioned in the preceding sections of this article shall be forever disqualified from holding any office of honor, trust or profit under the constitution and laws of this state, and from voting at any election; and every officer who shall be convicted of any official misdemeanor or misconduct in office, or of any offense which is by this or any other statute punishable by disqualification to hold office, shall, in addition to the other punishment prescribed for such offenses, forfeit his office. (R. S. 1889, § 3734.)

SEC. 2103. **Exacting illegal fees.**—Every officer who shall, by color of his office, unlawfully and willfully exact or demand or receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor. (R. S. 1889, § 3735—g.)

SEC. 2105. **Punishment for misdemeanor in office.**—Every officer or person holding any trust or appointment, who shall be convicted of any willful misconduct or misdemeanor in office, or neglect to perform any duty enjoined on him by law, where no special provision is made for the punishment of such misdemeanor, misconduct or negligence, shall be punished by fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (R. S. 1889, § 3737—h.)

SEC. 2108. **Usurping office.**—If any person shall take upon himself any office or public trust in this state, and exercise any power

(e) Indictment. 74 A. 313. Conduct of officer must be shown to be willful and corrupt. 2 Mo. 23; 8 Mo. 148, 254; 41 Mo. 210; 50 Mo. 362, 419; 22 Mo. 318; 57 Mo. 243; 122 Mo. 355; 119 Mo. 383; 63 A. 620; 59 A. 590; 31 A. 57; 74 A. 313.

(f) Indictment. 24 A. 227; 119 Mo. 383; 122 Mo. 355; 68 Mo. 179.

(g) Indictment. 62 A. 33. Statute construed. 45 Mo. 492; 119 Mo. 383. Extortion by constable. 47 Mo. 416. St. Louis court of criminal correction has no jurisdiction of this offense. 45 Mo. 492.

(h) 119 Mo. 383; 59 A. 590.

to do any act appertaining to such office or trust, without a lawful appointment or deputation, he shall, upon conviction, be adjudged guilty of a misdemeanor. (R. S. 1889, § 3740.)

SEC. 2110. **Intimidating voters.**—If any person, by menaces, threats or force, or by any other unlawful means, either directly or indirectly attempt to influence any qualified voter in giving his vote, or to deter him from giving the same, or disturb or hinder him in the free exercise of his right of suffrage, at any election held under the constitution or laws of this state, the person so offending shall, on conviction thereof, be adjudged guilty of a misdemeanor. (R. S. 1889, § 3742.)

SEC. 2111. **Defrauding voters.**—Any person who designedly gives a printed or written ticket to any qualified voter of this state, containing the written or printed names of persons for whom said voter does not design to vote, for the purpose of causing such voter to poll his vote contrary to his known wishes, shall, on conviction, be adjudged guilty of a misdemeanor. (R. S. 1889, § 3743.)

SEC. 2112. **Circulating fraudulent tickets.**—Any person who shall cause to be printed and circulated or who shall circulate any false and fraudulent tickets, which upon their face appear to be designed as a fraud upon voters, shall, upon conviction, be deemed guilty of a misdemeanor. (R. S. 1889, § 3744.)

SEC. 2113. **Importing fraudulent voters.**— Any person who shall bring into this state any person or persons resident in another state, with intent that such person so imported shall vote at any election within this state before they shall possess the requisite qualifications, shall, on conviction, be adjudged guilty of a misdemeanor. (R. S. 1889, § 3745.)

SEC. 2114. **Fraudulent voting.**—Every person who shall, at any election held in pursuance of the laws of this state, or of any city or other municipality thereof, vote more than once, either at the same or a different place, or shall knowingly cast more than one ballot, or shall vote at any such election knowing that he is not a qualified voter and is not entitled to vote, and every person who shall knowingly advise or procure any person to vote who is not entitled to vote, or shall knowingly advise or procure any illegal vote to be cast at any such election, shall be deemed guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not exceeding one year, or by a fine of not less than fifty dollars, or by both such fine and imprisonment. (R. S. 1889 § 3746—i.)

(i) 132 Mo. 297.

25781

SEC. 2115. **Attempt to cast illegal vote.**—Every person who shall attempt to vote at any election held in pursuance of the laws of this state, or in any city or other municipality thereof, knowing that he is not entitled to vote at such election, shall be deemed guilty of a misdemeanor. (R. S. 1889, § 3747.)

SEC. 2116. **Fraud by judges and clerks of election.**—If any judge or clerk of any election authorized by law, or any other person, shall willfully and knowingly receive and place in the ballot-box, or aid, assist or assent to the placing in any ballot-box, any ballot, or paper purporting to be a ballot, which is not legally voted by a qualified voter at such election, or shall illegally, willfully and fraudulently abstract, or aid in or assent to the abstraction, from any ballot-box any legal ballot for the purpose of changing the lawful result of any election, or shall in any manner willfully influence or attempt to influence any person to do any of the acts aforesaid, or to omit to do any lawful act required by him in relation to any election, or shall in any manner illegally, willfully and fraudulently change or attempt to change, or induce any other person to change, the true and lawful result of any election, by any act to be done either before, at the time of or after such election, by a wrong count of the ballots, by changing the true returns or making a false return thereof, or by changing the figures of the returns after they are made up, either before or after the returns are duly made, or in any other manner except in pursuance of law or the order of a court, every person offending against any of the provisions of this section shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years, or by imprisonment in the county jail not less than three months, and by a fine not less than one hundred dollars, or by both such fine and imprisonment, and shall also be forever prohibited from voting at any election and from holding any office or position of trust or emolument under authority of this state, or any department thereof, or of any county, city or town therein, either by election or appointment, or as clerk or employe. (R. S. 1889, § 3748—j.)

SEC. 2117. **Fraud in casting up returns.** — Any person who may be authorized by law to receive, canvass or count the poll-books, tally-lists or election returns of any election authorized by law, who shall willfully and knowingly receive, canvass and count, or assist therein, any poll-books, tally-lists or election returns which are fraudulent, forged, counterfeited, or shall falsely and fraudulently make an incorrect and false account of any election returns, with intent to defeat a fair expression of the popular will, and any person or

(j) Indictment must aver that defendant was a judge or clerk. 134 Mo. 262, 275.

persons whose duty it may be to grant certificates of election, or in any manner declare the result of any election held by authority of law, who shall grant a false certificate, or declare the result of any election based upon fraudulent, fictitious or illegal votes or returns, with intent to defeat a fair expression of the popular will, or to deprive any person duly elected of his office, shall be deemed guilty of a felony, and upon conviction, be punished as prescribed in the next preceding section. (R. S. 1889, § 3749.)

SEC. 2118. **Neglect of judges and clerks to perform duty.**—If the judges and clerks of any election, or any of them, shall willfully neglect, refuse or omit to perform any duty enjoined or required of them by law with respect to holding and conducting such election, receiving and counting out the ballots and making proper return thereof, or shall inspect or read any ballot voted, or disclose the name or names of any of the candidates or persons voted for by any voters at such election, shall be deemed guilty of a misdemeanor. (R. S. 1889, § 3750—k.)

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## OFFENSES AGAINST PUBLIC ORDER OR PUBLIC PEACE.

### CHAPTER 15—ARTICLE VII.

SEC. 2139. **Mayor may issue proclamation.**—Any mayor or chief magistrate of any town or city, being apprehensive of a riot or riotous assemblage within such town or city, may, by proclamation, require all minors to keep within doors for any length of time not exceeding three days, during that period of each astronomical day of twenty-four hours which intervenes between the end of one hour after sunset and the beginning of one hour before sunrise; and all minors offending against such proclamation may be forthwith arrested, and on conviction may be imprisoned in the house of correction of such city, or other safe place of confinement, to be prescribed by ordinance of such city, for a period not exceeding thirty days. (R. S. 1889, § 3771.)

SEC. 2140. **Special deputies, etc., to be residents of this state.**—That no sheriff of a county, mayor of a city, or other private persons, authorized by law to appoint special deputies, marshals or policemen, in this state, to preserve the public peace, and quell public disturbances, shall hereafter appoint as such special deputies, marshals or policemen, any person who is not a resident of this state, and has been a resident of this state for at least three years prior to his appointment. (New section.)

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(k) 19 A. 210.

25782

SEC. 2141. **Persons not to be imported to perform duties of sheriffs, marshals, etc.**—That it shall be unlawful for any person, company, association or corporation, to bring or import into this state any person or persons, or association of persons, for the purpose of discharging the duties devolving upon sheriffs, deputy sheriffs, policemen, constables or peace officers, in the protection or preservation of public or private property, or in the punishment of any person violating the criminal laws of this state. (New section.)

SEC. 2142. **Penalty for impersonating officer.**—That any person or persons who shall, in this state, without the authority, exercise or attempt to exercise the functions of, or hold himself or themselves out to any person or persons, company, association or corporation as a deputy sheriff, marshal, policeman, constable or peace officer, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, be punished by imprisonment for not less than three months, nor more than one year. (New section.)

SEC. 2143. **Penalty for violation of section 2141.**—That any person, company, or corporation, guilty of violating any of the provisions of section 2141 of this article shall be liable to a penalty of ten thousand dollars, to be recovered in the name of the state, for the use of the school fund of the county where such private armed detective forces were used, by such persons, or corporations; and the person, officer or agent employing such private detectives, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment at hard labor for not less than one year, nor more than five years; and every day that private armed detective forces are employed, or used, shall be considered a separate and distinct offense: *Provided, however*, that nothing contained in this article shall prevent the governor of this state from appointing a citizen of another state to serve a warrant issued on a requisition from the governor of another state. (New section.)

SEC. 2144. **Importation of armed men for police duty in this state, prohibited.**—It shall be unlawful for any person or persons, company, association or corporation to bring or import into this state any person or persons, or association of persons, for the purpose of discharging the duties devolving upon the police officers, sheriffs or constables in the protection or preservation of public or private property. (R. S. 1889, § 3772.)

SEC. 2145. **Sheriff to appoint none but citizens deputy, etc.**—Hereafter no sheriff in this state shall appoint any under sheriff or deputy sheriff except the person so appointed shall be, at the time of his appointment, a *bona fide* resident of the state. (R. S. 1889, § 3773.)

SEC. 2146. **Mayor and police authorities can appoint none but citizens.**—The mayor, chief of police and members of the board of police commissioners of any city in this state shall be governed by the same restrictions and subject to the same penalties as a sheriff of any county, under the provisions of this article. (R. S. 1889, § 3774.)

SEC. 2147. **Punishment for bringing armed men into the state.**—Any person or persons violating any of the provisions of section 2144 of this article shall be punished by imprisonment in the penitentiary for not less than two years nor more than five years; and if any company, association or corporation shall be guilty of violating this article, said company, association or corporation shall be punished by a fine of not less than one thousand dollars. (R. S. 1889, § 3775.)

SEC. 2148. **Punishment for appointing any but citizens for police duty.**—Any sheriff of any county, or mayor, chief of police or member of the board of police commissioners of any city, now holding office or hereafter elected to any such office, who shall knowingly violate any of the provisions of this article, as set forth in sections 2145 and 2146, shall be punished by imprisonment in the county jail for not less than three months nor more than one year. (R. S. 1889, § 3776.)

SEC. 2149. **Mayor may have dramshops closed.**—The mayor or chief magistrate of any town or city in this state may, by proclamation, cause all drinking shops, bars and other places where intoxicating liquors or drinks are customarily sold, given or dispensed, to be closed for any period of time not exceeding thirty-six hours, upon any election for officers of the city, town, state, county, or of the United States; and may also, by proclamation, forbid all persons to sell, give, lend, barter or otherwise dispense or distribute intoxicating drinks or liquors during the same period of time within such town or city, or within one mile of its corporate limits; and any person disobeying such proclamation, and each and every person aiding, abetting or co-operating with him, shall be deemed guilty of a misdemeanor. (R. S. 1889, § 3777.)

SEC. 1862. **Carrying deadly weapons, etc.**—If any person shall carry concealed upon or about his person any deadly or dangerous weapon, or shall go into any church or place where people have assembled for religious worship, or into any school-room or place where people are assembled for educational, literary or social purposes, or to any election precinct on any election day, or into any court-room during the sitting of court, or into any other public assemblage of persons

25783

met for any lawful purpose other than for militia drill, or meetings called under the militia law of the state, having upon or about his person any kind of fire-arms, bowie-knife, dirk, dagger, slung-shot or other dealy weapon, or shall, in the presence of one or more persons, exhibit any such weapon in a rude, angry or threatening manner, or shall have or carry any such weapon upon or about his person when intoxicated, or under the influence of intoxicating drinks, or shall, directly or indirectly, sell or deliver, loan or barter to any minor any such weapon, without the consent of the parent or guardian of such minor, he shall, upon conviction, be punished by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment in the county jail not less than five days nor more than six months, or by both such fine and imprisonment. (R. S. 1889, § 3502—l.)

SEC. 1863. **Above section not to apply to certain officers.**—The next preceding section shall not apply to police officers, nor to any officer or person whose duty it is to execute process or warrants, or to suppress breaches of the peace, or make arrests, nor to persons moving or traveling peaceably through this state, and it shall be a good defense to the charge of carrying such weapon, if the defendant shall show that he has been threatened with great bodily harm, or had good reason to carry the same in the necessary defense of his person, home or property. (R. S. 1889, § 3503—m.)

SEC. 2211. **Betting on election.**—Every person who shall bet or wager any money or other valuable thing on the result of any election authorized by the constitution and laws of the United States or of this state, or on any vote to be given at such election, or who shall knowingly become stakeholder of any such bet or wager, shall be punished by fine not exceeding fifty dollars. (R. S. 1889, § 3824—n.)

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## PRESIDENTIAL ELECTORS.

CHAPTER 95.

SEC. 6616. **Electoral districts.**—Hereafter, at all elections held in this state for the offices of president and vice-president of the United States, the electoral districts shall be the same as the congressional districts into which the state shall be divided, and the

(l) Act constitutional. 74 Mo. 528; 90 Mo. 302. Deadly weapon, information. 81 Mo. 514; 20 A. 397, 629; 49 A. 270; 47 A. 603; 24 A. 410, 413; 45 A. 94. Fire-arms, officer. 84 Mo. 177; 25 A. 133; 49 A. 445. Defense. 30 A. 633; 52 A. 609. Carrying for sport or to deliver to owner no offense. 39 A. 47, 127; 138 Mo. 233; 70 A. 143.

(m) 47 M. A. 605; 124 Mo. 397.

(n) 24 Mo. 353, 356; 22 Mo. 459.

same number of electors as there may be districts shall be chosen by the qualified voters, one of whom shall be a resident of each district; and in addition thereto, two electors shall be chosen by the state at large. (R. S. 1889, § 2358.)

SEC. 6619. **Election of electors.**—The qualified voters in each of said districts shall meet at their respective places of holding elections on the first Tuesday after the first Monday of November, in the year one thousand eight hundred and eighty, and on the first Tuesday after the first Monday of November every four years thereafter, unless the congress of the United States shall appoint a different day; and in that case, on such day as the said congress shall appoint, and shall proceed to elect as many fit persons as the state shall then be entitled to elect, as electors of president and vice-president, one of whom shall be a resident of each district. (R. S. 1889, § 2361.)

SEC. 6620. **How conducted.**—The election shall be conducted by the judges who may have been appointed to hold the general election for the same year, and under the same regulations, and have the public notice thereof given by the sheriff in each county as is or may be required by law regulating such general elections. (R. S. 1889, § 2362.)

SEC. 6621. **Returns, how certified.**—It shall be the duty of the judges of such elections in the different townships to make returns thereof to the clerks of the county courts of their respective counties, within two days after such election, which clerks shall, within eight days after they receive such returns, certify and transmit the same to the governor, by delivering them into the nearest postoffice on the most direct route to the seat of government. If there shall be a failure to receive any of the returns at the seat of government for one mail after the same is due, the secretary of state may dispatch a messenger to the county not returned, with directions to bring up said returns to the governor. (R. S. 1889, § 2363.)

SEC. 6622. **Governor to cast up votes, etc.**—The governor, on receipt of the certificates from the several counties in each district which he may have received within fifteen days after the day of election, shall immediately add up the vote from the several counties, and the person residing in any one district having the highest number of votes given in the state for any one person residing in the same district, shall by him be declared duly elected elector for said district. (R. S. 1889, § 2364.)

SEC. 6623. **Tie vote, how determined.**—If two or more persons, residing in one district shall have an equal number of votes given in the state, as aforesaid, and more than any other person residing in the same district, the governor shall immediately notify the general assembly thereof, and such election shall be determined by joint vote of both houses of the general assembly, by choosing one of the persons so having an equal number of votes. (R. S. 1889, § 2365.)

SEC. 6624. **Governor to notify electors.**—It shall be the duty of the governor, at the expense of the state, in all cases to immediately notify the persons chosen of their election, as soon as the same shall have been ascertained, agreeably to the provisions aforesaid. (R. S. 1889, § 2366.)

SEC. 6625. **Contested elections.**—All contested elections for electors shall be determined by joint vote of both houses of the general assembly, and the proceedings in contesting such election shall be the same, in all respects, as in contested elections for governor. (R. S. 1889, § 2367.)

SEC. 6626. **List of electors to be delivered, etc.**—The governor shall, on or before the meeting of such electors, cause three lists of the names of such electors to be made and delivered to them, as required by act of congress. The persons employed in giving the notices, or conveying the returns aforesaid, shall be allowed five cents for every mile such person may travel in going and returning in the performance of any of the services aforesaid, to be audited and paid as other claims. (R. S. 1889, § 2368.)

SEC. 6627. **Compensation of electors.**—The electors shall receive for their services the same compensation as the members of the general assembly, and the governor shall audit their accounts and grant them certificates for the amounts ascertained to be due, which ceritficates shall be sufficient vouchers to authorize the state auditor to draw his warrant for the amount, which shall be paid out of the state treasury as other demands. (R. S. 1889, § 2369.)

SEC. 6628. **Elector failing to attend, place, how supplied.**—If any of the electors appointed under this chapter shall fail to attend at the seat of government by the hour of two o'clock in the afternoon of the day appointed by act of congress for their meeting, then the electors present may appoint other persons to act as electors in the place of those absent; and if there be a failure to elect, the electors attending at such time and place shall appoint some suitable

person or persons, as the case may be, to fill the vacancy or vacancies existing by reason thereof. (R. S. 1889, § 2370.)

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## MEMBERS OF THE GENERAL ASSEMBLY.

CHAPTER 123—ARTICLE I.

SEC. 8382. **Certificate of election of senator.**—In all senatorial districts, composed of two or more counties, the clerks of all the counties shall transmit to the clerk of the county first named in said district, within twelve days after such election, a certificate, under their hands, of the number of votes given for each candidate in each respective county; and the clerk of the county in which any candidate resides, if such candidate shall produce to him the tax collector's receipt for the payment of a state and county tax within one year next preceding such election, shall certify to the clerk of the county first named that such candidate has paid such tax, as appears from the receipt of the tax collector of such county; and the clerk of the county to which such return shall be made, after examination of the same, shall certify the result to the secretary of state, and give to the person having the highest number of votes a certificate of his election under the seal of his office; and if it appears from the certificate of the clerk of the county in which such person resides, that such person so elected has paid a state and county tax within one year next preceding his election, the clerk of the county to which such return is made shall further certify that such person so elected has paid such tax as appears from the certificate of the clerk of —— county, Missouri, and give such certificate to the person so elected. (R. S. 1889, § 6622.)

SEC. 8383. **Certificate of election of member of house.** When any person shall have been elected as a member of the house of representatives of the general assembly of the state of Missouri, the county clerk of the county which such person was elected to represent, if the person so elected shall produce to him the tax collector's receipt for the payment of a state and county tax within one year next preceding his election, shall include in the certificate of election which he is required by law to give to such person so elected, a certificate setting forth that such person has paid such tax as appears from the receipt of the tax collector of such county. (R. S. 1889, § 6623.)

25785

SEC. 8387. **Governor shall issue writs of election, when.** Whenever the governor shall receive any resignation or notice of vacancy, or when he shall be satisfied of the death of any member of either house, during the recess, he shall, without delay, issue a writ of election to supply such vacancy. (R. S. 1889, § 6627.)

SEC. 8388. **Writs of election, how directed.**—When any vacancy shall happen in the senate, for a district composed of more than one county, the writ of election shall be directed to the sheriff of the county first named in the law establishing the district; and when such vacancy shall happen in a senatorial district, which shall have been divided or altered after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the sheriff of the county first named in such old district; and when any vacancy shall happen in either house, for any county which shall have been divided after the general election next preceding the occurrence of such vacancy, the writ of election shall be directed to the shriff of the old county. (R. S. 1889, § 6628.)

SEC. 8389. **Duty of the sheriff on receipt of writ.**—The sheriff to whom any writ of election shall be delivered shall cause the election to supply such vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue his proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the sheriff of each of the counties within which any part of such old county or district may lie, who shall cause copies of such notice to be put up, and the election to be held accordingly, in such parts of their respective counties as composed a part of the old county or district for which the election is to be held, at the last preceding general election; and the returns shall be made and the certificate of election granted in all things as if no division had taken place. (R. S. 1889, § 6629.)

SEC. 8390. **New district entitled to hold election, when.** When any district or county shall be so altered or divided during the term for which a member shall be elected, and the new district or county shall be authorized to elect their members before the expiration of the term of the former member, in that case the election to fill the vacancy shall be held for the district or county as it shall remain after such alteration or division, and not as it was at the last preceding general election. (R. S. 1889, § 6630.)

## RAILROAD AND WAREHOUSE COMMISSIONERS.

CHAPTER 12—ARTICLE IV.

SEC. 1198. **Railroad commissioners—election, qualifications.**—The governor shall, immediately after the passage of this act, and before the adjournment of the present general assembly, by and with the consent of the senate, appoint three railroad commissioners, who shall hold their office until the first day of January, 1877, and until their successors are elected and qualified, and at the general election to be held in 1876, there shall be elected by the qualified voters of the state three railroad commissioners, one of whom shall be elected for two years, and one of whom shall be elected for four years, and one of whom shall be elected for six years; and at each general election, every two years thereafter, there shall be one railroad commissioner elected, who shall hold his office for six years, and until his successor is elected and qualified. But no person owning any bonds, stock or other property in any railroad company, or in the employ of any railroad or transportation company, or in any way or manner personally interested therein, shall be so appointed or elected; *and provided*, that the governor shall fill by appointment all vacancies that may occur in the board of railroad commissioners by death, resignation or removal from office; but no such appointment shall be for a longer time than till the next general election thereafter. (R. S. 1889, § 2678.)

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## ASSESSORS.

CHAPTER 149—ARTICLE II.

SEC. 9137. **Election of assessor.**—At the general election in the year one thousand nine hundred, and every four years thereafter, there shall be elected by the qualified voters of the several counties in this state a county assessor, who shall hold his office for a term of four years, and until his successor is elected and qualified, unless sooner removed from office; and no person elected to said office of assessor shall hold said office more than two successive terms: *Provided*, that this section shall not apply to the city of St. Louis. (Laws 1895, p. 41, amended—o.)

(o) 47 Mo. 310.

25786

SEC. 9138. **Certificate of election.**—The clerks of the respective county courts shall deliver to the persons elected or appointed as provided in this article, immediately after their election or appointment, a certificate thereof, under the seal of their respective county courts. (R. S. 1889, § 7525.)

SEC. 9139. **Term of office.**—Assessors elected under the provisions of this chapter shall enter upon the discharge of their duties on the first day of June next after they shall have been elected, and shall hold their offices for the term of two years, and until their successors are elected and qualified. (R. S. 1889, § 7526—p.)

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## CLERKS OF COURTS OF RECORD.

CHAPTER 7.

SEC. 513. **Election—term of office—commission.**—At the general election in the year eighteen hundred and eighty-two, and every four years thereafter, except as hereinafter provided, the clerks of all courts of record, except of the supreme court, the St. Louis court of appeals, and except as otherwise provided by law, shall be elected by the qualified voters of each county and of the city of St. Louis, who shall be commissioned by the governor, and shall enter upon the discharge of their duties on the first Monday in January next ensuing their election, and shall hold their offices for the term of four years, and until their successors shall be duly elected and qualified, unless sooner removed from office. (R. S. 1889, § 1963—q.)

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## PROBATE CLERKS.

CHAPTER 91—ARTICLE X.

SEC. 6244. **Probate clerk elected in cities of 300,000 inhabitants or over—bond—oath, etc.**—In all cities now having or which may hereafter have a population of three hundred thousand inhabitants and over, there shall be elected at the general election in the year 1898, and every four years thereafter, an officer, to be known as the probate clerk, whose official term shall commence on the first day of January next after election. Said officer shall, before entering upon the discharge of his duties, make and subscribe an oath before the city register of such cities that he will support the

(p) See Sec. 9137.

(q) Uniformity in term of office, St. Louis. 94 Mo 117; 40 A. 406.

constitution of the United States and of the state of Missouri, and that he will faithfully discharge all the duties of the office of probate clerk; and shall also execute a bond to the city within which he shall be elected, in the penal sum of ten thousand dollars, with two or more solvent sureties, to be approved by the judge of probate of such cities, conditioned for the faithful performance of the duties of probate clerk, the collection and accounting for all fees allowed the probate judge or probate court of the city within which he shall have been elected, which oath and bond shall be filed in the office of the register of such cities. The city or any person injured may maintain suit on said bond in like manner as suit may now be maintained on other office bonds. (Laws 1897, p. 82.)

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## CONSTABLES.

CHAPTER 9.

SEC. 877. **Election and official term.**—At the general election to be held in 1890, and at each general election every two years thereafter, the qualified voters of each township in every county in this state shall elect a constable, who shall be a resident of the township for which he is elected, and who shall hold his office for two years and until his successor be elected and qualified: *Provided*, that in townships that now contain or may hereafter contain a city of over one hundred thousand and less than three hundred thousand inhabitants, and which has been or may hereafter be divided into justice of the peace districts, the constabulary districts of said township shall be made to conform to and be co-extensive with such justice districts; the county court shall appoint an additional constable for each of said districts, who shall, in addition to his other qualifications as herein provided, be a resident of the district for which he is appointed or elected, who shall hold his office until the next general election, at which time there shall be elected in all such townships a constable for each of said districts. The judges and clerks of election shall certify the same to the clerk of the county court, and in case of a tie or contested election, it shall be determined by that tribunal. (R. S. 1889, § 2371, amended, Laws 1891, p. 175—r.)

(r) County court cannot appoint constable in which office is filled by one whose tenure is undisputed. 27 A. 477.

25787

## CONSTABLES IN CITIES OF 300,000 INHABITANTS.

CHAPTER 91—ARTICLE XXII.

SEC. 6508. **Justices and constables to be elected, when.** In all cities which now contain or may hereafter contain three hundred thousand inhabitants or more there shall be elected, on the general election day, A. D. 1894, and every four years thereafter, one justice of the peace and one constable for each district in said cities, which districts shall be determined, fixed and located as hereinafter provided. (Laws 1891, p. 175.)

SEC. 6509. **Number of districts.**—For the first one hundred thousand of population in said cities there shall be five districts; and there shall be an additional district for every additional one hundred thousand, and for every fractional part of one hundred thousand exceeding fifty thousand of population. For the purpose of this article the last general census of the United States of America shall be taken as the basis of population. (Laws 1891, p. 175.)

SEC. 6511. **Division into districts, who to make.**—The judges of the probate court, criminal court of correction and of the circuit court, or a majority thereof, in all such cities shall, six months prior to the general election of 1894, divide their respective cities into districts upon the basis of population as fixed by this article, and shall define and fix the metes and bounds of said districts, and each of said districts shall be entitled to one justice of the peace and one constable, to be elected as provided in this article. (Laws 1891, p. 175.)

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## JUDGES OF COURTS.

### SUPREME COURT.

CHAPTER 14—ARTICLE II.

SEC. 1634. **Judges of supreme court, when elected.**—At the general election in the year eighteen hundred and eighty, and every two years thereafter, there shall be elected one judges of the supreme court, who shall hold his office for a term of ten years from the first day of January next after his election, and until his successor is duly elected and qualified. (R. S. 1889, § 3277—s.)

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(s) See Const. amendment of 1890.

## ST. LOUIS COURT OF APPEALS.

SEC. 1641. **Judges of St. Louis court of appeals—election and term of office.**—At the general election in eighteen hundred and ninety-two, and every four years thereafter, the qualified voters of the counties of Monroe, Shelby, Knox, Scotland, Clark, Lewis, Marion, Ralls, Pike, Lincoln, Montgomery, Warren, St. Charles, St. Louis, Jefferson, Ste. Genevieve, Perry, Cape Girardeau, Scott, Mississippi, New Madrid, Pemiscot, Dunklin, Stoddard, Wayne, Bollinger, Madison, St. Francois, Washington, Franklin, Crawford, Iron, Reynolds, Carter, Butler, Ripley, Oregon, Shannon, Dent, Phelps, Pulaski, Texas, Howell, Ozark, Wright, Douglas, Laclede, Webster, Christian, Taney, Stone, Greene, Lawrence, Barry, Newton, McDonald and the city of St. Louis, shall elect a judge of the St. Louis court of appeals, who shall be a resident of the district composed of the said counties and city, and who shall hold his office for a etrm of twelve years, and until his successor is duly elected and qualified. (R. S. 1889, § 3284—t.)

SEC. 1650. **Audrain county placed within jurisdiction St. Louis court of appeals.**—That the county of Audrain is hereby taken out of the jurisdiction of the Kansas City court of appeals, and the same is hereby placed within the jurisdiction of the St. Louis court of appeals. (Laws 1893, p. 131.)

## KANSAS CITY COURT OF APPEALS.

SEC. 1649. **Jurisdiction of Kansas City court of appeals.** The jurisdiction of the Kansas City court of appeals shall be co-extensive with all the counties in the state except those embraced in the jurisdiction of the St. Louis court of appeals. (R. S. 1889, § 3292.)

SEC. 1651. **Election of judges, term of office, etc.**—At the general election in the year eighteen hundred and eighty-eight, the qualified voters of the counties within the jurisdiction of said court of appeals shall elect three judges for said court, who shall determine by lot the duration of their several terms of office, which shall be respectively four, eight and twelve years, and certify the result to the secretary of state; and every four years thereafter one judge of said court shall be elected, to hold his office for the term of

(t) Section 1650 entitles Audrain county to vote for election of judges to St. Louis court of appeals.

25788

welve years. The term of office of said judges shall begin on the first Monday of January next after their election; the judge having the oldest license to practice law in this state shall be the presiding judge of said court. (R. S. 1889, § 3293.)

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## CIRCUIT COURTS.

### CHAPTER 14—ARTICLE III.

SEC. 1673. **Election of judges.**—At the general election in the year (1892) one thousand eight hundred and ninety-two, and at the general election every sixth year thereafter, all the circuit judges shall be elected, and shall enter upon the duties of their offices on the first Monday in January next ensuing: *Provided*, that at the general election in the year (1896) eighteen hundred and ninety-six, and at the general election every sixth year thereafter, the judges of the circuit court of Jackson county whose terms of office expire in said year (1896) one thousand eight hundred and ninety-six, shall be elected, and shall enter upon the discharge of the duties of their offices as above provided: *Provided, further*, that nothing contained in this section shall be construed as changing the law now in force concerning the election of circuit judges in the city of St. Louis and the county of Buchanan. (R. S. 1889, § 3317, amended, Laws 1892, p. 9.)

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## PROBATE COURTS.

### CHAPTER 14—ARTICLE IV.

SEC. 1754. **Election of judges.**—At the general election in the year eighteen hundred and seventy-eight, and every four years thereafter, except as hereinafter provided, a judge of probate shall be elected by the qualified voters in every county. Said judge shall be commissioned by the governor and shall take the oath prescribed by the constitution for all officers, and shall enter upon the discharge of his duties on the first day of January ensuing his election, and continue in office for four years and until his successor shall be duly elected and qualified. (R. S. 1889, § 3398—u.)

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(u) 73 Mo. 421.

## COUNTY COURTS.

CHAPTER 14—ARTICLE V.

SEC. 1772. **Election of, and tenure of office.**—At the general election in the year eighteen hundred and eighty, and every two years thereafter, the qualified voters of each of said districts shall elect a county court judge, who shall hold his office for a term of two years and until his successor is duly elected and qualified; and at the general election in the year eighteen hundred and eighty-two, and every four years thereafter, the presiding judge of said court shall be elected by the qualified voters of the county at large, who shall hold his office for the term of four years and until his successor is duly elected and qualified. Each judge elected under the provisions of this article shall enter upon the duties of his office on the first day of January next after his election. (R. S. 1889, § 3417—v.)

SEC. 1773. **Elections, how certified.**—All elections of judges of the county court under this article shall be certified to the clerks of the county courts of the counties wherein such elections shall be held; and in case of a tie between two or more persons, the same shall be determined by the sheriff of the proper county. (R. S. 1889, § 3418.)

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## ST. LOUIS COURT OF CRIMINAL CORRECTION.

APPENDIX, VOL. II, R. S. 1899—ARTICLE XVIII.

SEC. 1. **Court established.**—There is hereby established in the county [city] of St. Louis a court of record, which shall be known and called "the St. Louis court of criminal correction." (Laws 1865-6, p. 78, § 1.)

SEC. 3. **Election, qualifications and terms of judge and officers.**—At the general election, every four years, there shall be elected by the qualified voters of St. Louis city a judge and clerk of said court, a prosecuting attorney, to be styled the prosecuting attorney for the St. Louis court of criminal correction of St. Louis city, and an assistant prosecuting attorney. Said judge shall possess the qualifications of a judge of the circuit court, and shall hold his office for the term of four years from the time of his election, and until

(v) 41 Mo. 395; 139 Mo. 106.

25789

his successor, shall be duly elected and qualified, unless sooner removed from office. Said clerk shall possess the qualifications of a clerk of the circuit court, and be subject to all the requirements and obligations exacted of and imposed by law upon clerks of courts of record, and shall hold his office for the term of four years from the time of his election, and until his successor shall be duly elected and qualified, unless sooner removed from office; and said clerk shall have power, by and with the consent of the judge of said court, to appoint one or more deputies, which said appointment shall be approved by said court; thereupon said court shall fix the salary of said deputy or deputies, and the said salary or salaries shall be paid monthly by the city of St. Louis. Said prosecuting attorney and assistant prosecuting attorney shall possess the same qualifications as required by law for circuit attorneys; they shall hold their office for the term of four years, and until their successors shall be duly elected and qualified unless sooner removed from office. (Laws 1869, p. 194, § 2—w.)

## CRIMINAL COURT OF JACKSON COUNTY.*

SEC. 1. **Name of court.**—A court of record is hereby established, to be called the criminal court of Jackson county.

SEC. 6. **Qualification and election of judge.**—The judge of said court shall, previous to his election or appointment, have attained the age of thirty years, have resided one year in the state, and to be a resident of said Jackson county; and the qualified voters of Jackson county shall, at the special election for a judge of the Twenty-fourth judicial circuit, elect a judge of the court hereby established, who shall hold his office until the first day of January, 1875. At the general election for circuit judges in the year 1874, and every six years thereafter, the qualified voters of said county shall elect a judge of said court, who shall enter upon the discharge of his duties on the first day of January next succeeding his election.

SEC. 9. **Election, qualification and compensation of clerk.**—The clerk of the court hereby established shall be elected at the same time of the election of judge of said court, who shall hold his office till the next general election of clerks of circuit courts; he shall perform the same duties and receive the same compensation as is or may be allowed to clerks of circuit courts for like services, and shall give a like bond, to be approved by the court hereby established;

(w) 49 A. 184.

*Laws 1871, p. 110.

and all future elections of clerk of said court shall be at the same time as election for clerks of courts of record.

## CRIMINAL COURT OF BUCHANAN COUNTY.*

SEC. 1. **Court established.**—Pursuant to sections one and thirty-one of article VI of the constitution of the state of Missouri, and to a notice duly and legally published in the city of St. Joseph, in Buchanan county, in the state of Missouri, a court of record is hereby established in the county of Buchanan, said county having a population exceeding fifty thousand inhabitants, and to be designated and called the criminal court of Buchanan county.

SEC. 8. **Election of judge.**—At the general election in the year 1888, and every four years thereafter, the qualified voters of said Buchanan county shall elect a judge of said court, who shall enter upon the discharge of his duties on the first day of January next succeeding his election.

## CRIMINAL COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF THE STATE OF MISSOURI.†

SEC. 1. **Court established.**—A court of record is hereby established in the counties composing the fifteenth judicial circuit, in the state of Missouri, to be called the criminal court of the fifteenth judicial circuit of the state of Missouri.

SEC. 2. **Qualifications and tenure of office of judge.**—Said court shall be composed of one judge, who shall possess all the qualifications required by law of judges of the circuit court, and shall be elected at the same time and in the same manner as circuit judges are elected, and shall hold his office for the term of six years from the first day of January next succeeding his election, and until his successor is duly elected and qualified.

## CRIMINAL COURT OF GREENE COUNTY.§

SEC. 1. **Court established.**—Pursuant to sections one and thirty-one of article IV of the constitution of the state of Missouri, and to a notice duly and legally published in the city of Springfield, in Greene county, in the state of Missouri, a court of record is hereby established in the county of Greene, said county having a population exceeding fifty thousand inhabitants, and to be designated and called the criminal court of Greene county.

*Laws 1885, p. 136.

†Laws of 1875, p. 42, amended, Laws 1897, p. 80.

§Laws of 1889, p. 86.

25790

SEC. 8. **Election of judge, when.**—At the general election in the year 1892, and every four years thereafter, the qualified voters of said Greene county shall elect a judge of said court, who shall enter upon the discharge of his duties on the first day of January next succeeding his election.

## STURGEON COURT OF COMMON PLEAS.*

SEC. 1. **Court established.**—A court of record, to be called the Sturgeon court of common pleas, is hereby established, to extend its jurisdiction over the territory included within the following boundaries, to wit: Beginning at the southeast corner of section fourteen, in township fifty, range eleven, in Boone county, and running thence north on the boundary line between the county of Boone and the county of Audrain, to the northeast corner of Boone county; thence the same line produced until it intersects the boundary line between the county of Monroe and the county of Audrain, at the northeast corner of section thirty-five, in township fifty-three, range eleven; thence west on the boundary line between the county of Monroe and the county of Audrain, until it intersects the boundary line between the county of Randolph and the counties of Monroe and Audrain; thence the same line produced to the northwest corner of section thirty-four, in township fifty-three, range fourteen; thence south on the subdivisional line to the southwest corner of section fifteen, in township fifty, range fourteen; thence east on the subdivisional line to the place of beginning; which shall possess all the powers, perform the duties and be subject to the restrictions of a court of record, according to the laws of this state.

SEC. 8. **Clerk of said court—his term of office.**—There shall be a clerk of the Sturgeon court of common pleas, who shall possess the qualification of a clerk of the circuit court, and hold his office for the term of four years, and until his successor is elected and qualified; he may be removed from office for the like causes and in the same manner as a circuit court clerk, and receive like fees for his services.

SEC. 10. **Time of election for said clerk.**—On the first Monday in February, in the year 1860, and every four years thereafter, there shall be an election held at the city of Sturgeon, in the manner provided by law for holding elections, and at such place in said city as the judges of said election shall appoint, for the election

*The circuit court judge of the Boone county circuit court is *ex officio* judge of this court.

of such clerk of said court of common pleas, by the qualified voters residing within the aforesaid boundaries set forth in section one of this act.

SEC. 11. **Certificate of election.**—Immediately after the election of said clerk the judges of said election shall transmit to the governor a certificate, under their hands and seals, of the number of votes given for each candidate for the office of clerk of the said court of common pleas, and the governor shall thereupon issue a commission to the person who shall receive the highest number of votes as clerk of the said court of common pleas.

## CAPE GIRARDEAU COURT OF COMMON PLEAS.

SEC. 1. **Court established.**—A court of record, to be called the Cape Girardeau court of common pleas, is hereby established within and for the city of Cape Girardeau, in the county of Cape Girardeau, which shall possess all the powers, perform the duties and be subject to the restrictions of a court of record, according to the laws of the state. (Laws 1851, p. 201.)

SEC. 5. **Election of judge.**—At the general election in the year 1884, and at the general election every fourth year thereafter, there shall be elected by the qualified voters of the county of Cape Girardeau a judge of said Cape Girardeau court of common pleas, who shall be commissioned and qualified in the same manner as judges of the circuit court, and who shall receive in full compensation for his services the sum of one thousand dollars per annum, to be paid in the same way and in the same manner as salaries of circuit judges are paid. (Laws 1883, p. 72.)

## COLLECTORS.

CHAPTER 149—ARTICLE III.

SEC. 9203. **The collector and his term of office.**—Hereafter, the offices of sheriff and collector shall be distinct and separate offices in all of the counties in this state. And at the general election in 1872, and every two years thereafter, a collector, to be styled the collector of the revenue, shall be elected in all the counties of this state, who shall hold their offices for two years and until their successors are duly elected and qualified: *Provided*, that nothing herein contained shall be so construed as to prevent the same person from holding both offices of sheriff and collector. (R. S. 1889, § 7585—x.)

(x) 78 Mo. 163; 71 Mo. 470.

25791

## JUSTICES OF THE PEACE.

CHAPTER 43—ARTICLE I.

SEC. 3807. **Shall be elected, when—term of office.**—Justices of the peace, as herein provided for, shall be elected at the general election to be held in eighteen hundred and eighty-two, and shall hold their offices for four years, or until their successors are elected, commissioned and qualified; but every justice of the peace now in office shall continue to act as such until the expiration of his commission, and until his successor is elected and qualified. (R. S. 1889, § 6094—y.)

SEC. 3811. **Election of, how conducted.**—The election of justices of the peace shall, in all respects, be conducted as other elections and the returns made as for other offices. (R. S. 1889, § 6098.)

SEC. 3812. **County court to decide election of, when.**—Whenever two or more persons shall have an equal number of votes for justices of the peace for any township, or there is a contested election, the county court shall decide the same. (R. S. 1889, § 6099—z.)

## JUSTICES OF THE PEACE IN CITIES OF 300,000 INHABITANTS.

CHAPTER 92—ARTICLE XXII.

SEC. 6508. **Justices and constables to be elected, when.** In all cities which now contain or may hereafter contain three hundred thousand inhabitants or more there shall be elected, on the general election day, A. D. 1894, and every four years thereafter, one justice of the peace and one constable for each district in said cities, which districts shall be determined, fixed and located as hereinafter provided. (Laws 1891, p. 175.)

SEC. 6509. **Number of districts.**—For the first one hundred thousand of population in said cities there shall be five districts; and there shall be an additional district for every additional one

(y) Justices can only be elected by virtue of the statute and in the absence of such authority the election is void. 81 Mo. 479. Where a justice continues to act after his term has expired, his acts, when within the jurisdiction of a justice, are valid as to third parties and cannot be collaterally attacked. 48 Mo. 251; 9 A. 71; 11 A. 596. Where, however, a justice was appointed under a law which had been repealed before the appointment he is not an officer *de facto*. 57 A. 78; 62 A. 209. Section constitutional. 73 Mo. 78.

(z) The circuit court has no jurisdiction to try a contest for the office of justice of the peace. 25 A. 563.

hundred thousand, and for every fractional part of one hundred thousand exceeding fifty thousand of population. For the purpose of this article the last general census of the United States of America shall be taken as the basis of population. (Laws 1891, p. 175.)

SEC. 6511. **Division into districts, who to make.**—The judges of the probate court, criminal court, criminal court of correction and of the circuit court, or a majority thereof, in all such cities shall, six months prior to the general election of 1894, divide their respective cities into districts upon the basis of population as fixed by this article, and shall define and fix the metes and bounds of said districts, and each of said districts shall be entitled to one justice of the peace and one constable, to be elected as provided in this article. (Laws 1891, p. 175.)

## PROSECUTING ATTORNEYS.

CHAPTER 75—ARTICLE II.

SEC. 4944. **Election and qualifications of prosecuting attorneys.**—At the general election to be held in this state in the year A. D. 1880, and every two years thereafter, there shall be elected, in each county of this state, a prosecuting attorney, who shall be a person learned in the law, duly licensed to practice as an attorney at law in this state and enrolled as such, at least twenty-one years of age, and shall hold his office for two years, and until his successor is elected, commissioned and qualified. (R. S. 1889, § 631—a.)

SEC. 4946. **Election of.**—Elections under this chapter shall be governed by the general law regulating elections. (R. S. 1889, § 633.)

SEC. 4947. **Duties of county clerk.**—The clerk of the county court of each county shall transmit to the secretary of state an abstract of the votes given for each candidate for prosecuting attorney in his county. (R. S. 1889, § 634.)

SEC. 4959. **Election of circuit attorney for city of St. Louis.**—At the general election to be held in this state in the year 1892, and every four years thereafter, there shall be elected in the city of St. Louis one circuit attorney and one assistant circuit attorney, who shall reside in said city, and shall possess the same qualifications and be subject to the same duties that are prescribed by this act for prosecuting attorneys throughout the state, and it shall be the duty of the city register of said city to transmit to the secretary of state an abstract of the votes given for each candidate for circuit attorney

(a) Tie vote for prosecuting attorney; governor must order new election. 65 Mo. 306.

25792

id assistant circuit attorney in said city, in the same manner as required by law of clerks of county courts. (R. S. 1889, § 646.)

SEC. 4961. **Prosecuting and assistant prosecuting attorney of St. Louis.**—At the general election to be held in this state n the year 1890 and every four years thereafter, there shall be lected in the city of St. Louis, for the St. Louis court of criminal correction, one prosecuting attorney and one assistant prosecuting attorney, who shall reside in said city and shall possess the same qualications and be subject to the same duties as are now provided by aw for the government of aid officers; and the duty of transmitting he abstract of the votes by which said officers are elected, heretoore devolving upon the county clerk, shall be performed by the regster of said city, as provided in section 4959. (R. S. 1889, § 648.)

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## PUBLIC ADMINISTRATORS.

CHAPTER 1—ARTICLE XVI.

SEC. 289. **To be elected, when—oath and bond.** — Every county in this state, and the city of St. Louis, shall elect a public administrator at the general election in the year 1880, and every four years thereafter, who shall be *ex officio* public guardian and curator in and for his county. Before entering on the duties of his office, he shall take the oath required by the constitution, and enter into bond to the state of Missouri in a sum not less than ten thousand dollars, with two or more securities, approved by the court and conditioned that he will faithfully discharge all the duties of his office, which said bond shall be given and oath of office taken on or before the first day of January following his election, and it shall be the duty of the judge of the court to require the public administrator to make a statement annually, under oath, of the amount of property in his hands or under his control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property; and the court may from time to time, as occasion shall require, demand additional security of such administrator, and, in default of giving the same within twenty days after such demand, may remove the administrator and appoint another. (R. S. 1889, § 296, amended —b.)

(b) 99 Mo. 569; 10 A. 95; 52 A. 258.

## RECORDER OF DEEDS.

CHAPTER 147.

SEC. 9080. **Election or appointment of recorder.**—If the said order shall be made twelve months next before the time herein provided for the election of recorder aforesaid, election shall be ordered for the purpose of filling said office, to be held not exceeding forty days thereafter, and the person chosen at such election shall hold his office until the next regular election of recorder, and until his successor is duly qualified; but if said order is made within twelve months next before the time herein provided for the election or recorder, the governor, on being notified by the county court of the fact, shall appoint some suitable person as recorder, who shall hold his office until his successor is duly qualified, and who shall be entitled, on demand, to receipt for all the books and papers pertaining to said office of recorder, and the circuit clerk shall deliver to him all books and papers pertaining to said office of recorder. (R. S. 1889, § 7446.)

SEC. 9081. **Election.**—On the first Tuesday after the first Monday in November, one thousand eight hundred and sixty-six, and every four years thereafter, an election shall be held for the said office of recorder, in each county of the state where the offices of clerk of the circuit court and recorder of deeds have been separated, and the person so chosen at said election shall, on the first day of January next following, enter upon the duties of his office, first giving bond in the sum of not less than one thousand nor more than five thousand dollars, conditioned for the faithful performance of the duties of his office, with at least two sufficient sureties, to be approved by the county court. (R. S. 1889, § 7447—c.)

SEC. 9082. *Id.* **How conducted.**—Such elections, and all returns thereof, shall be conducted and made in the manner provided by law as in case of elections, and the returns thereof, of clerks of circuit courts. (R. S .1889, § 7448.)

SEC. 9083. **Tie or contest.**—If there be a tie, a new election shall be awarded by the county court of the county wherein such election may be held. (R. S. 1889, § 7449.)

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(c) 44 Mo. 159.

25793

## SHERIFFS AND CORONERS.

CONST., ART. IX, SEC. 10, R. S. 1889, CHAPTER 158.

SEC. 10. **Sheriffs and coroners.**—There shall be elected by the qualified voters in each county, at the time and places of electing representatives, a sheriff and coroner. They shall serve for two years, and until their successors be duly elected and qualified, unless sooner removed for malfeasance in office, and shall be eligible only four years in any period of six. Before entering on the duties of their office, they shall give security in the amount and in such manner as shall be prescribed by law. Whenever a county shall be hereafter established, the Governor shall appoint a sheriff and a coroner therein, who shall continue in office until the next succeeding general election, and until their successors shall be duly elected and qualified. (d)

SEC. 10034. **Certificate of election, etc.**—When any person shall be elected sheriff, the clerk of the county court shall deliver to him a certificate of his election, under the seal of the court, and shall also certify that fact to the clerk of the circuit court, who shall file the certificate in his office, and he shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election. (R. S. 1889, § 8173—e.)

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## SURVEYORS.

CHAPTER 164.

SEC. 10176. **Surveyor to be elected, when — term of office.**—At the November election in the year 1868, and every four thereafter, the qualified voters of each county shall elect some suitable person as county surveyor, who shall hold his office for four years, and until his successor is elected, commissioned and qualified. The present incumbents may remain in office until the persons elected at the time aforesaid are duly commissioned and qualified. (R. S. 1889, § 8302.)

SEC. 10177. **Election, how certified.** — The clerk of the county court shall certify the election of county surveyors in the

(d) 135 Mo. 325; 90 Mo. 229.

(e) 41 Mo. 32, 238, 247. In approving bond of sheriff, county court acts in a ministerial capacity. 45 Mo. 53.

same manner as other elections of state and county officers, and the person elected shall be commissioned by the governor. (R. S. 1889 § 8303.)

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## TREASURERS OF COUNTIES.

CHAPTER 97—ARTICLE IV.

SEC. 6764. **Election of county treasurers.**—On the Tues day after the first Monday in November, 1892, and every two years thereafter, there shall be elected by the qualified voters of the several counties in this state, a county treasurer, who shall be commissioned by the county court of his county, and who shall enter upon the discharge of the duties of his office on the first day of January next succeeding his election, and shall hold his office for the term of two years and until his successor is elected and qualified, unless sooner removed from office: *Provided*, that no person shall be elected to said office of treasurer more than two successive terms: *Provided further*, that in counties having adopted, or which may hereafter adopt, township organization, the term of office of said treasurer shall be extended to the first day of April next after the election of his successor. (R. S. 1889, § 3159, amended, Laws 1891, p. 105—f.)

SEC. 6765. **How governed and conducted.**—Said election shall be governed and conducted under the law regulating the election of county officers in said counties. (R. S. 1889, § 3160.)

SEC. 6766. **Case of tie, how decided.**—In case of two or more candidates having an equal and the highest number of votes for said office of treasurer, the county court of the proper county shall select the treasurer aforesaid from the persons so tied. (R. S. 1889, § 3161.)

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## MUNICIPAL ELECTIONS—GENERAL PROVISIONS.

CHAPTER 91—ARTICLES I AND VIII.

SEC. 5257. **Cities and towns may be incorporated in their respective classes, how.**—Any city or town in this state existing by virtue of the present general law, or by any local or special law, may elect to be come a city of the class to which its population would entitle it under the provisions of this article, by passin

(f) 92 Mo. 428. County court, proper body to commission treasurer. 20 A. 684

25794

an ordinace or proposition, and submitting the same to the legal voters of such city or town, at an election to be held for that purpose, not less than twenty nor more than thirty days after the passage of such ordinance or proposition; and if a majority of such voters voting at such election shall ratify such ordinance or proposition, the mayor or chief officer of such city or town shall issue his proclamation declaring the result of such election, and thereafter such city or town shall, by virtue of such vote, be incorporated under the provisions of the general law providing for the government of the class to which such city belongs, which class shall be determined by the last census taken, whether state or national. Any city or town of the state not incorporated may become a city of the class to which its population would entitle it under this article, and be incorporated under the law for the government of cities of that class, in the following manner: Whenever a majority of the inhabitants of any such city or town shall present a petition to the county court of the county in which such city or town is situated, setting forth the metes and bounds of their city or town and commons, and praying that they may be incorporated, and a police established for their local government, and for the preservation and regulation of any commons appertaining to such city or town, and if the court shall be satisfied that a majority of the taxable inhabitants of such town have signed such petition, the court shall declare such city or town incorporated, designating in such order the metes and bounds thereof, and thenceforth the inhabitants within such bounds shall be a body politic and incorporate, by the name and style of the city of ———, or the town of ———; and the first officers of such city or town shall be designated by the order of the court, who shall hold their offices until the first general election of officers, as provided by law, and until their successors shall be duly elected and qualified: *Provided*, that when any city or town is or may be situated on the county line, and in two counties, the petition shall be signed by a majority of the taxable inhabitants of such city or town in each county, and presented to the county court of each county, and designating which of the two county courts shall designate the officers therefor, and if the county court of each county declares such city or town incorporated, the inhabitants thereof shall thenceforth be a body politic and incorporate, by the name and style of the city of ———, or the town of ———; *and provided further*, that appeals taken from the decision of the mayor, judge or other officer before whom any cause is tried, acting for said city or town, may be sent to the circuit court of either county

wherein such city or town is situated, as may be specified in the order granting such appeal. (R. S. 1889, § 977, amended, Laws 1891, p. 65—g.)

SEC. 5259. **Property qualification prohibited.**—It shall not be lawful for the municipal authorities of any city or town in the state of Missouri, in any case to require any person to be the owner of real estate in order to make such person eligible to hold any office, or to be a member of any city or town council or municipal assembly, or judge or clerk of election in such city or town, and any provision in the charter of any municipality of this state which requires as a qualification for any office, either elective or appointive, or judge or clerk of election, that the person so elected or appointed shall be the owner of real estate, is hereby declared inoperative and void. (R. S. 1889, § 979.)

SEC. 6129. **Elections, when held.**—All town and city elections required by former or existing laws to be holden on Monday shall hereafter be holden on the Tuesday next succeeding the Monday specified in said laws as the day for holding said elections. (R. S. 1889, § 1903.)

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## IN CITIES OF THE FIRST CLASS.

CHAPTER 91—ARTICLES II AND XX, AND CHAPTER 102—ARTICLE VIII.

SEC. 5264. **Elections, when held.**—The first general election for elective officers shall be held on the first Tuesday in April and every four years thereafter; and all such elections shall be held under the provisions of the general election law. (R. S. 1889, § 985.)

SEC. 7257. **Abstract of votes, how made—copy to be sent to secretary of state.**—Within eight days after the close of such election such board of election commissioners shall publicly open all the returns aforesaid and shall make abstracts of statements of all the votes for governor and lieutenant-governor on one sheet; all votes for other state officers on another sheet; all votes for presidential electors on another sheet; all votes for judges of the supreme court on another sheet; all votes for judges of the court of appeals on another sheet; all votes for members of congress and for senators and representatives to the general assembly on another sheet; all

(g) 54 A. 1; 61 A. 494. *Mandamus.* 89 Mo. 357. *Quo warranto.* 116 Mo. 582. Validity of ordinance; *de facto* officers. 119 Mo. 149. *Quo warranto,* information. 120 Mo. 397. No appeal lies from county court incorporating town. 46 A. 596. Incorporation void, [illegible] metes and bounds not properly described. 48 A. 531.

25795

votes for county officers on another sheet; all votes for city officers on another sheet; all votes for any other officer on a separate and appropriate sheet; all votes for and all votes against any proposition which may be submitetd to a vote of the people on another sheet. It shall be the duty of such board to canvass, add up and declare the result of every election held within the boundaries of such city, and transmit an abstract of the same to the secretary of state, or other proper officer, as required by law; and such abstract or results, and a certified copy thereof, shall be treated everywhere within the state, and by all public officers, with the same force and effect as the abstract of votes now authorized by the laws of the state in such cases made and provided. (New section.)

SEC. 7258. **Commissioners to make out and deliver certificates of election.**—The election commissioners shall make out a certificate of election to each person having the highest number of votes for the several offices voted for, including aldermen and members of the municipal assembly, and deliver such certificate of election to the person entitled to it on his application. (New section.)

SEC. 5291. **Elective city officers.**—The following named city officers shall be elected by the qualified voters of such city, and shall hold their office for the term of four years, and until their successors shall be duly elected and qualified, viz.: A mayor, comptroller, auditor, treasurer, register, collector, recorder of deeds, inspector of weights and measures, sheriff, coroner, marshal, public administrator, president of board of assessors, and the president of the board of public improvement. (R. S. 1889, § 1039.)

SEC. 5404. **Council to consist of how many.**—The council shall consist of thirteen members, one of whom shall be its president, who shall be chosen on a general ticket by the qualified voters of the city for four years, subject to the exception stated in the next section. Every member of the council shall be a qualified voter, at least thirty years of age, and shall have been a citizen of this state five years, and an inhabitant of the city, and an owner of property therein for one year next before the day of his election. (R. S. 1889, § 1152.)

SEC. 5405. **Tenure of office.**—Of the members of the council first elected, the president and the six receiving the highest number of votes shall hold their office for four years, and the other six for only two years. In case of a tie, the senior in age shall hold for four years. At each general election thereafter for members of the house

of delegates, members of the council shall be elected to succeed those whose term will then have expired. (R. S. 1889, § 1153.)

Sec. 5406. **House of delegates.**—The house of delegates shall consist of one member from each ward, to be chosen every two years by the qualified voters of the several wards. (R. S. 1889, § 1154.)

Sec. 5407. **Qualifications of members.**—Every member of the house of delegates shall, before the day of election, have attained the age of at least twenty-five years, have been a citizen of the United States and an inhabitant of the city three years, and of the ward which he may be chosen to represent one year, and shall have paid city and state taxes for at least two years next before the day of election. (R. S. 1889, § 1155.)

Sec. 5408. **Additional qualifications.**—In addition to the qualifications in the preceding sections, every member of the municipal assembly shall possess the following: He shall not be directly or indirectly interested in any contract with the city, or any department or institution thereof, and shall not be indebted to the state or city on account of any tax. He shall not have been convicted of any malfeasance in office, bribery or any other corrupt practices or crime. Before any member of the council or house of delegates shall take his seat or perform the duties of his office, he shall take and subscribe to an oath before the register, who shall file the same in his office, that he possessed all the qualifications required in this and the preceding sections, and is not subject to any of the disqualifications therein named, and that he will support the constitution of the United States and this state, and faithfully discharge the duties of his office. Any member who shall, at any time during his term, cease to possess any of the qualifications mentioned in this and the preceding sections, shall thereby forfeit his office, and the same shall be filled as provided for in cases of other vacancies. (R. S. 1889, § 1156.)

Sec. 6492. **Water-works property, how acquired—issue of bonds, etc., in cities having more than 100,000 and less than 300,000 inhabitants.**—Every city now having or that may hereafter have more than one hundred thousand and less than three hundred thousand inhabitants, whether organized under general law or special charters, or under the provisions of section 16 of article 9, of the constitution, shall have the right and power to construct, maintain and operate water-works to supply the city and all persons and parties therein with water, and may, for such purpose, take, hold,

25796

use and dispose of real and personal property, whether within or outside of the city, in the state of Missouri, necessary to accomplish such object. It may acquire such property by purchase, donation, or an exercise of the power of eminent domain as provided in sections 6492 to 6497, inclusive, and may do whatever may be necessary to the exercise of the powers herein granted. Every such city shall have the power to issue its bonds for such purpose to an amount not exceeding the constitutional limitation—such bonds to bear interest at a rate not over six per centum per annum, payable semi-annually, and not to be sold for less than par. Said bonds, when authorized to be issued, and when they are signed by the proper officers of such city, shall, for such purposes, be considered and treated as money in the treasury of such city. Every such city shall have power to make at any time a contract with any such person, corporation or company, for a period not exceeding twenty years, to furnish water to the city, or to the city and its inhabitants, and to authorize such corporation, person or company, during the existence of such contract, to construct, maintain and operate water-works in the city. Such contract shall contain a provision reserving to such city the right at its option at any time to acquire and become the sole owner of such portion of the water-works of such corporation, person or company as may at the time of such purchase be situated in the state of Missouri, on paying a fair and equitable value therefor, to be ascertained, if the parties thereto cannot agree, by the circuit court of the county in which such city is situated, upon the petition of the city, and in such manner as the court may determine; a copy of such petition shall be served upon the corporation, person or company, at least fifteen days before the same is presented to the court. The bonds shall not be issued until an ordinance for their issue shall be submitted to a vote of the qualified voters of the city, at an election to be held for that purpose, and approved by two-thirds of the voters voting at such election. The contract above mentioned shall not take effect until an ordinance fully setting forth its terms is submitted to a vote of the qualified voters of the city at a general or special election, and approved by two-thirds of the voters voting at such election. (Laws 1893, p. 60.)

Sec. 6493. **Election—notice and manner of conducting same.**—For the purpose of testing the sense of the voters of any such city upon a proposition to become indebted, or to increase the debt thereof, by issuing bonds for the purposes mentioned in the preceding section, the council, trustees or other legislative authority

of such city shall order an election to be held, of which not less than fifteen days' previous notice shall be given by publication in some newspaper published therein. Such election shall be held and judges and clerks thereof appointed as in case of other elections in such city, or in such manner and under such regulations as may be prescribed by ordinance. Such special election may be held at the time and places of a general election, and the judges, clerks and other officers of such general election may act as judges, clerks and other officers of such special election. (Laws 1893, p. 60.)

SEC. 6494. **Ballots shall contain, what.**—The council, trustees or other legislative authority of such city shall cause to be prepared and printed ballots to be used at such election, which shall be in the following forms:

For increase of debt for water-works—Yes.

For increase of debt for water-works—No.

The former of which shall be taken as a vote assenting to such increase of debt, and the latter as dissenting therefrom. (Laws 1893, p. 60.)

SEC. 6495. **Bonds, issue of.**—If the proposition for the incurring or increasing of the debt of any such city be carried or assented to by two-thirds of the voters of such city voting at an election to be held for that purpose, the council, trustees or other legislative authority of such city may by ordinance declare the result of such election, and cause bonds of such city to be issued for the amount of such debt or increase of debt, payable to bearer, and in denominations of not less than one hundred dollars nor more than one thousand dollars each, payable not exceeding twenty years from date, with interest as hereinbefore provided, which bonds shall have interest coupons attached thereto. All such bonds shall be signed by the mayor or other chief officer of such city and by the city clerk, and each bond shall have affixed thereto the corporation seal of such city. Each of the coupons shall be signed by the mayor or other chief officer and city clerk, both of which names may be lithographed thereon. (Laws 1893, p. 60.)

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## IN CITIES OF THE SECOND CLASS.

### ARTICLE III.

SEC. 5490. **Council, how composed and elected.**—The legislative functions of cities of the second class shall be vested in a

25797

common council, composed of two aldermen from each ward and resident therein, one of whom shall be elected by the qualified voters of the city at large, the other by the qualified voters of each ward respectively, so that one-half of said common council shall be chosen by the qualified voters of the city at large, and the other half by the qualified voters of the respective wards. Such aldermen shall hold their offices for two years, and until their successors shall be duly elected and qualified. The aldermen elected by the qualified voters of the city at large shall be voted for at the general election to be held on the first Tuesday after the first Monday in April, 1890, and every two years thereafter, and those elected by the qualified voters of the wards respectively shall be voted for at an election held in each of the wards on the first Tuesday after the first Monday in April, 1891, and every two years thereafter. (R. S. 1889, § 1238.)

Sec. 5492. **Aldermen, qualifications of.**—No person shall be eligible to the office of alderman until he shall have resided in the city for the period of one year, and in the ward from which he is chosen six months next preceding his election, and have paid therein a city tax, and not less than twenty-one years of age, a citizen of the United States and a qualified voter of the city, and not in arrears in the payment of any tax or other liability due such city, or directly or indirectly interested in, or partner of, or interested with any one interested in any contract with the city for any public work, or for furnishing any supplies to the city or any of its institutions. (R. S. 1889, § 1239.)

Sec. 5506. **Cases of tie vote.**—Whenever there shall be a tie in the election of an alderman, the judges of the election shall certify the facts to the common council, and the parties named in such certificates shall immediately, in the presence of the common council, determine by lot their respective rights. (R. S. 1889, § 1253.)

Sec. 5527. **Who eligible.**—No person shall be deemed eligible to any office in the city who is not a qualified voter of said city, and who is not a citizen of the United States and of the state of Missouri, and has not lived in the city one year next preceding his election. (R. S. 1889, § 1274.)

Sec. 5528. **Mayor, election of.**—The chief executive officer of such city shall be the mayor, who shall be elected by the qualified voters thereof, and who shall hold his office for two years, and until his successor is duly elected and qualified. (R. S. 1889, § 1275.)

Sec. 5529. **Qualifications of.**—No person shall be a mayor who has not resided in the city one year, and who does not, at the

time of his election, possess the qualifications of an alderman, as hereinbefore defined; nor shall any person continue in the office of mayor who shall cease to possess any of said qualifications. (R. S. 1889, § 1276.)

SEC. 5530. **Tie vote, how determined.**—When two or more persons shall have an equal number of votes and more than any other person, for the office of mayor, the common council shall decide the election. (R. S. 1889, § 1277.)

SEC. 5531. **Contested elections.**—Whenever an election for mayor shall be contested, the common council shall determine the same. (R. S. 1889, § 1278.)

SEC. 5532. **Vacancies.**—Whenever any vacancy shall happen in the office of mayor, it shall be filled by election, in such manner as shall be provided by ordinance. (R. S. 1889, § 1279.)

SEC. 5553. **Oath.**—Every officer of the corporation, before entering upon the duties of his office, shall take and subscribe an oath before some officer of the law authorized to administer oaths, as prescribed by the constitution of this state to civil officers, and that he will faithfully support this article and ordinances of the city, which said oath shall be indorsed upon or attached to his certificate of election or appointment, and he shall deliver the same to the city clerk; and every officer of the corporation, except the mayor, aldermen, judge of the police court, comptroller, and all other persons required by law to give bond, shall, before entering upon the duties of their office, give bond to such city in such sum as may be prescribed by ordinance, with securities approved by the comptroller, conditioned for the faithful discharge of his duties, which said bond shall be filed with the city clerk. For any breach of the condition of said bond suit may be instituted thereon by the city, or by any person or persons claiming to have been injured by reason of any such breach, in the name of such city, for the use of such person or persons. If any officer fail to deliver to the city clerk a certificate and oath as herein required, within twenty days after his election or appointment, the office to which he may have been elected or appointed shall be declared vacated. (R. S. 1889, § 1299.)

SEC. 5554. **Certificate of election to be recorded.**—It shall be the duty of the city clerk to record the certificate of election or appointment mentioned in the preceding section, with the oath thereto attached or thereon indorsed, within ten days after the same is delivered to him. (R. S. 1889, § 1300.)

SEC. 5701. **General election to be held, when.**—The general election of all elective officers of such city shall be held on the

25798

first Tuesday after the first Monday in April, every two years, except as otherwise provided in this article in relation to the election of aldermen. Special elections to fill vacancies shall be held under such regulations as may be provided for by ordinance. (R. S. 1889, § 1444.)

SEC. 5702. **Elections to be held, how.**—All elections shall be held under the general laws of this state. (R. S. 1889, § 1445.)

SEC. 5512. **Disposition of acquired territory—qualified voters.**—When territory is annexed to any city of the second class pursuant to subdivision number XLIII of section 5508, the common council shall, by ordinance, organize the same into a new ward or wards, or attach the same to some existing ward or wards, long enough before the next ensuing general city election to enable electors in such annexed territory to register, and all other proper steps to be taken according to law, so that electors of such annexed territory may have full opportunity to register and vote at such election. Actual residents of any territory at the time of the annexation thereof to any city of the second class according to this article shall, if otherwise qualified and duly registered, be qualified electors or voters of the city, and be eligible to any office therein at the next general city election following such annexation. In case of redistricting or division of the city into wards, creation of any new ward or wards, or change of boundary in any ward or wards, every qualified elector or voter residing in any ward at any general city election next thereafter shall, if otherwise qualified and duly registered, be a qualified voter of the city, and be eligible to any office therein. (R. S. 1889, § 1259.)

SEC. 5513. **Change not to be made, when.**—Territory shall not be annexed to any such city within four months next preceding any general city election, nor shall there be a redistricting or division of the city into wards or change of boundaries of any ward or wards, or creation of any new ward or wards, within two months next preceding any general election. (R. S. 1889, § 1260.)

SEC. 5515. **Election of aldermen.**—Whenever any change in the number of any ward, or alteration in the boundaries of any ward shall be made, or new ward shall be established, there shall be no election of aldermen in such wards until the next regular election for corporation officers. (R. S. 1889, § 1262.)

SEC. 5516. **Act not to affect certain officers.**—Nothing herein contained shall be construed to limit or abridge the term of office which any alderman may be elected to fill, but every alderman shall be deemed and taken to be, for the residue of the term for which

he may have been elected, an alderman of that ward in which his actual residence and place of abode may be, at and after any division of the city into wards, or creation of any new wards, or change in the boundaries of any ward or wards. (R. S. 1889, § 1263.)

Sec. 5560. **May issue bonds.**—Any such city may, by ordinance passed by its common council and approved by its mayor, provide for the issue and sale of bonds of the city, either to borrow money thereon to pay for any public work, improvement or improvements for which it may legally appropriate and pay out money in its treasury, or to pay in whole or in part for any such work, improvement or improvements. The ordinance shall specify such public work, improvement or improvements so to be paid for in some reasonably definite manner to enlighten voters, and the amount of bonds proposed to be issued for such public work, improvement or improvements. (R. S. 1889, § 1305.)

Sec. 5562. **Ordinance referred to circuit judge.**—After passage and approval of such ordinance, the city counselor and city comptroller shall present the same to a judge of the circuit court of the county in which the city is situate, and submit to him a sworn statement of the city comptroller, showing the then existing indebtedness of the city, of every nature and description, and amount thereof and what such indebtedness will be, as near as he can calculate, at the date of issue of the bonds. There shall also be submitted to such judge proof satisfactory to him of the value of the taxable property in the city, ascertained by the assessment next before the last assessment for state and county purposes. Such other proofs as the judge may require shall be submitted, and if, after full examination, he be satisfied that the amount of bonds proposed to be issued can be issued without violation of the constitution or laws of the state, he shall so certify over his hand on the back of the original ordinance. (R. S. 1889, § 1307.)

Sec. 5563. **Notice of election.**—After such certificate the city shall cause to be published in two or more newspapers, printed and published in the city, for at least thirty successive days prior to the time for election, in each issue of the papers during the time, a copy of such ordinance and certificate, with a proclamation according to law, that an election will be held at the time appointed in the ordinance for the voters of the city to vote on the proposition for the issue of bonds as proposed by the ordinance. (R. S. 1889, § 1308.)

Sec. 5564. **Election, form of ballot.**—Any elector or voter desiring at such election to assent to the incurring of indebtedness

by such issue of bonds, may cast a ballot having written or printed thereon, "for issue of bonds," but if he does not desire to assent to incurring indebtedness by such issue of bonds, he may cast a ballot having written or printed thereon, "against issue of bonds." Such election shall be conducted, and the result ascertained and declared, as near as may be, as in case of other special city elections, and the city may pass and enforce all ordinances proper to conduct the election and learn the sense of the voters as to the issue of bonds. (R. S. 1889, § 1309.)

ARTICLE XVI.

SEC. 6411. **Fund for pensioning firemen—treasurer of corporation ex officio treasurer of fund—cities of second class to ratify, etc.**—The municipal authorities, by act or ordinance, in all cities, villages or incorporated towns in this state having an organized fire department, may set apart not exceeding one per centum of all revenue received for municipal purposes by such cities, villages or incorporated towns from licenses issued by such cities, villages or incorporated towns, as a fund for the pensioning of crippled and disable members of the fire department, and of the widows and orphans of deceased members of the fire department of such cities, villages or incorporated towns, and the treasurer of such cities, villages or incorporated towns shall be *ex officio* treasurer of such fund: *Provided*, that in any city of the second class the provisions of this article shall not be in effect until it shall be ratified by a majority of the voters of such city, who vote on that subject at an election, which shall be held at the request of one hundred petitioners. (Laws 1893, p. 112, amended.)

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## IN CITIES OF THE THIRD CLASS.

ARTICLE IV.

SEC. 5753. **Election of officers, when held, etc.**—A general election for the elective officers of each city of the third class shall be held on the first Tuesday in April after the organization of such city under the provisions of this article, and every two years thereafter, and all city elections shall be held under the provisions of the general election laws of the state: *Provided*, that all certificates of nomination and petitions therefor, as provided by the state election laws, shall be filed with the city clerk and not with any other officer,

and all duties specified to be performed by the constable or sheriff in the state election laws shall be performed by the marshal in city elections; and all tickets for city elections shall be printed by the city and at the city's expense; and all duties heretofore performed by the county clerk with reference to city elections shall be performed by the city clerk. The polling places for all elections in such cities, and the judges therefor, shall be selected and specified by the respective city councils of such cities by resolution, ordinance or otherwise. The manner of making returns of such elections shall be prescribed by ordinance. Any city organizing under the provisions of this article may elect a mayor and such other officers as may be necessary to carry this article into effect, who shall hold office until the second Tuesday in April thereafter, and until their successors are elected and qualified. (Laws 1893, p. 65.)

SEC. 5754. **Refusal to qualify, etc.—justice of the peace to order election.**—If, at any time, by reason of non-acceptance, resignation, refusal to qualify, or for any other cause, there shall be no officers of the city to order an election, any justice of the peace within the corporate limits is empowered to order and hold an election for city officers. (Laws 1893, p. 65.)

SEC. 5755. **Elective officers—terms of office.**—The following officers shall be elected by the qualified voters of the city, and shall hold their offices for two years, and until their successors are duly elected and qualified, to wit: A mayor, marshal, attorney, police judge, assessor, collector and treasurer. The attorney shall be a person learned in the law. (Laws 1893, p. 65.)

SEC. 5756. **Qualifications of mayor—contests.**—No person shall be mayor unless he be at least thirty years of age, a citizen of the United States and a resident of such city at the time of and for two years next preceding his election. When two or more persons shall have an equal number of votes for the office of mayor, or an election for mayor be contested, the matter shall be determined by the council. (Laws 1893, p. 65.)

SEC. 5766. **Vacancy in office of mayor, how filled—president pro tem., duties of.**—When any vacancy shall happen in the office of mayor, by death, resignation, removal from the city, removal from office, refusal to qualify or otherwise, the president *pro tem.* of the council shall, for the time being, perform the duties of mayor until such vacancy be filled; and in case of the temporary absence of the mayor or disability to perform the duties of his office, the president *pro tem.* of the council shall perform the duties of mayor until the mayor shall return or such disability be removed; and during

25800

the time the president *pro tem.* of the council shall act as mayor, he shall receive the same compensation that the mayor would be entitled to. In case of vacancy other than a temporary absence or disability, the person exercising the office of mayor shall cause a new election to be held, giving ten days' notice thereof by proclamation published in some newspaper published in the city: *Provided,* when a vacancy occurs within six months of a general municipal election, no election shall be called to fill such vacancy. (Laws 1893, p. 65.)

SEC. 5767. **Division of city into wards—councilmen.**—The council shall, by ordinance, divide the city into not less than four wards, and two councilmen shall be elected from each of such wards by the qualified voters thereof at the first election for councilmen in cities hereafter adopting the provisions of this article; the one receiving the highest number of votes in each ward shall hold his office for two years, and the one receiving the next highest number of votes shall hold his office for one year; but thereafter each ward shall elect annually one councilman, who shall hold his office for two years. (Laws 1893, p. 65.)

SEC. 5768. **Councilmen, qualifications of, etc.**—No person shall be a councilman unless he be at least twenty-five years of age, a citizen of the United States, and an inhabitant of the city for one year next preceding his election, and a resident of the ward from which he is elected six months next preceding his election. Whenever there shall be a tie in the election of a councilman, or an election for councilman be contested, the matter shall be determined by the council. (Laws 1893, p. 65.)

SEC. 5780. **Vacancies, how filled.**—If a vacancy occur in any elective office, the mayor, or the person exercising the office of mayor, shall cause a special election to be held to fill such vacancy, giving ten days' notice thereof by proclamation published in some newspaper published in the city: *Provided, however,* when any such vacancy occurs within six months of a general municipal election, no election shall be called to fill such vacancy, but the same shall be filled by the mayor or the person exercising the office of mayor by appointment: *Provided, further,* that any vacancy in the office of councilman which may occur within said six months shall be filled by election, in such manner as may be provided by ordinance. If a vacancy occur in any office not elective, the mayor shall appoint a suitable person to discharge the duties of the same until the first regular meeting of the council thereafter, at which time such vacancy shall be permanently filled. (Laws 1893, p. 65.)

SEC. 5845. **Lighting streets, lamp-posts, contracts for gas, electricity, etc.**—The council may provide for and regulate the lighting of streets and the erection of lamp-posts, poles and lights therefor, and shall have power to make contracts with any person, association or corporation for the lighting of the streets and other public places of the city with gas, electricity or otherwise: *Provided*, that no such contract shall be made for a longer time than ten years: *Provided, further*, that no such contract shall have any legal force until the same shall have been ratified by a two-thirds majority of the qualified voters of said city, voting at an election held for that purpose. The council shall have the right, also, to erect, maintain and operate gas-works, electric light works or light works of any other kind or name, and to erect lamp-posts, electric light poles, or any other apparatus or appliances necessary to light the streets, avenues, alleys or other public places, and to supply private lights for the use of the inhabitants of the city and its suburbs, and to regulate the same, and to prescribe and regulate the rates to be paid by the consumers thereof, and to acquire by purchase, donation or condemnation, suitable ground within or without the city, upon which to erect such works, and the right of way to and from said works, and also the right of way for laying gas-pipes, electric wires under or above ground, and erecting posts and poles and such other apparatus and appliances as may be necessary for the efficient operation of such works: *Provided*, that the council may in its discretion grant the right to any person or persons or corporation to erect such works and lay the pipe, wires and erect the posts, poles and other necessary apparatus and appliances therefor, upon such terms as may be prescribed by ordinance: *Provided, further*, that such right to any such person, persons or corporation shall not extend for a longer period than twenty years, and shall not be granted nor renewed unless by consent of a majority of the qualified voters of the city, voting at an election held for such purpose. (Laws 1893, p. 65.)

SEC. 5846. **Contracts for water, etc.—operate water-works, etc.**—The council shall have power to make contracts with any person, association or corporation for furnishing the city with water, and for supplying fire hydrants and public fountains: *Provided*, that no such contract shall be made for a longer time than twenty years; *and provided* that no such contracts shall have any legal force until the same shall have been ratified by a vote of two-thirds majority of the qualified voters, voting at an election to be held for that purpose. The council shall have the right also to erect, maintain and

25801

operate water-works for the city, and to regulate the same, to prescribe and regulate the rates to charge to private consumers of water furnished from such water-works, and to acquire by purchase, donation or condemnation, suitable grounds within or without the city upon which to erect said works, and the right of way to and from said works, and also the right of way for laying water-pipes and posts and telephone, telegraph or electric wires, and poles, under or above ground, as may be necessary for the efficient operation of said water-works; all of which shall be done in such manner as shall be prescribed by ordinance: *Provided*, that the council may in its discretion grant the right to any person, persons or corporation to erect, maintain and operate water-works, and lay pipes, erect poles and telegraph, telephone and other electric wires, under or above ground, as may be necessary for the efficient operation of said works, upon such terms as the council may by ordinance prescribe: *Provided, further,* that in no case shall such right extend for a longer period than twenty years, and shall not be granted nor renewed unless by the consent of a majority of the qualified voters of the city, voting at an election held for that purpose: *Provided*, that nothing in this and the preceding section shall be so construed as to prevent city councils from contracting with any persons, associations or corporations for supplying fire hydrants and public fountains, and to furnish the city with gas or electric lights in cities where franchises have already been granted and where water-works and electric plants already exist, without a vote of the people. (Laws 1893, p. 65.)

Sec. 5876. **Election on proposition to provide for drains and sewers, etc.**—In every city of the third class in this state, the acting municipal authorities thereof, upon a vote by ballot of two-thirds of the qualified voters of such city voting at an election held for that purpose, in favor of adopting the provisions of sections 5876 to 5893, inclusive, shall have power by ordinance to provide drains and sewers for the same, and to enforce and regulate connections therewith; and every such city shall have power to accept and acquire by gift, devise, purchase or by condemnation proceedings, both within and beyond the territorial boundaries of such city, the right of way for drains or sewers, and the use of natural water-courses of drainage for public drainage and sewer purposes for such city. The proposition to adopt the provisions of sections 5876 to 5893, inclusive, may be submitted at any regular municipal election, or at a special election authorized by ordinance for that purpose; in either case the submission shall be pursuant to ordinance, and on not

less than ten days' notice, thereof, signed by the mayor of such city, and published at least once a week in some newspaper published in the county in which city is situated, and having a circulation in such city. Such elections shall be conducted in accordance with the law governing regular municipal elections in such city; the ballots voted in favor of such proposition shall have written or printed thereon the words "for establishing sewers," and the ballots voted against such proposition shall have writen or printed thereon the words "against establishing sewers." When the result of such election shall be ascertained, the same shall be declared by the mayor of such city by proclamation, which shall be spread upon the records of such city, and all courts shall take judicial notice of such election and of the results thereof. (Laws 1895, p. 58.)

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## IN CITIES—FOURTH CLASS.

### ARTICLE V.

SEC. 5895. **Jurisdiction not affected by.**—The jurisdiction of any city which shall organize under the provisions of this article shall not in anywise be affected or changed in consequence thereof, but the limits, wards and boundaries of such city shall remain after such organization the same as they were previous; and all laws or parts of laws or ordinances not inconsistent with this article, which were in operation in such city prior to its organization under this article, or prior to the passage of this article, shall continue in force until repealed. The mayor and board of aldermen of such city, whether the same shall have been incorporated before becoming a city of the fourth class or not, with the consent of a majority of the legal voters of such city voting at an election therefor, shall have power to extend the limits of the city over territory adjacent thereto, and to diminish the limits of the city by excluding territory therefrom, and shall, in every case, have power, with the consent of the legal voters as aforesaid, to extend or diminish the city limits in such manner as in their judgment and discretion may redound to the benefit of the city: *Provided*, that such election shall be held in accordance with the provisions of article one, chapter 102, Revised Statutes of Missouri, 1899, and section 5896 of this article, and the same shall be held upon such notice and at such time and place, and the judges and clerks therefor shall be appointed and shall make

25802

their returns of the same in such manner, as may be prescribed by ordinance or resolution of such city. (Laws 1895, p. 65—h.)

Sec. 5896. **Election of officers.**—A general election for the elective officers of each city of the fourth class shall be held on the first Tuesday in April next after the organization of such city under the provisions of this article, and every two years thereafter; and all city elections shall be held under the provisions of article 1, chapter 102, Revised Statutes of Missouri, of 1889, except that the judges of election in such city election shall perform all the duties of both the judges of election and clerks of election as prescribed in the state election law, unless the city council shall provide for such clerks of election by ordinance. All duties specified in the state election law to be performed by the constable, or sheriff, shall be performed by the city marshal in the city elections; and all duties specified in the state election laws to be performed by the county clerk shall be performed by the city clerk in the city elections. The polling places for all elections in cities of the fourth class and the judges therefor, shall be selected and specified by the respective boards of aldermen of such cities, by resolution, ordinance, or otherwise. The manner of making returns of such elections shall be prescribed by ordinance: *Provided*, that any city organizing under the provisions of this article may elect a mayor and such other officers as may be necessary to carry this article into effect, who shall hold office until the first Tuesday in April thereafter and until their successors are elected and qualified. (Laws 1895, p. 65, amended—i.)

Sec. 5897. **Election ordered by justice of the peace, when.**—If, at any time, by reason of non-acceptance, resignation, refusal to qualify, or for any other cause, there shall be no officers of the city to order an election, any justice of the peace within the corporate limits is empowered to order and hold an election for city officers. (Laws 1895, p. 65.)

Sec. 5898. **Elective officers.**—The following officers shall be elected by the qualified voters of the city and shall hold their offices for the term of two years, and until their successors are elected and qualified, to wit: a mayor, marshal, collector and board of aldermen; and the board of aldermen, by ordinance, may provide for the election of a city assessor, who shall hold his office for the term of

(h) 105 Mo. 226; 115 Mo. 572; 116 Mo. 582; 119 Mo. 149; 145 Mo. 563. That part of section exempting agriculture and pastoral lands, is unconstitutional. 129 Mo.396; 128 Mo. 152. Reasonableness of ordinance extending boundaries of city is open to judicial scrutiny. 42 A. 18.

(i) 116 Mo. 582; 119 Mo. 149; 108 Mo. 153.

two years, and until his successor is elected and qualified; *and provided further*, that all assessors duly elected and qualified at the date of the passage of this article may hold their offices for the term elected. (Laws 1895, p. 65, amended, Laws 1897, p. 53—j.)

Sec. 5899. **Mayor, qualifications — tie vote, how determined.**—No person shall be mayor unless he be at least twenty-five years of age, a citizen of the United States and a resident of the city at the time of and for at least one year next preceding his election. When two or more persons shall have an equal number of votes for the office of mayor, the matter shall be determined by the board of aldermen. (Laws 1895, p. 65—k.)

Sec. 5910. **City to be divided into wards — aldermen to be elected.**—The board of aldermen shall, by ordinance, divide the city into not less than two wards, and two aldermen shall be elected from each ward by the qualified voters thereof, at the first election for aldermen in cities adopting the provisions of this article. At such election for aldermen, the person receiving the highest number of votes in each ward shall hold his office for two years, and the person receiving the next highest number of votes shall hold his office for one year; but thereafter each ward shall elect annually one alderman, who shall hold his office for two years. (Laws 1895, p. 65—l.)

Sec. 5911. **Aldermen, qualifications—tie vote, how determined.**—No person shall be an alderman unless he be at least twenty-one years of age, a citizen of the United States, and an inhabitant and resident of the city for one year next preceding his election, and a resident of the ward from which he is elected. Whenever there shall be a tie in the election of aldermen, the matter shall be determined by the board of aldermen; so also in case the election of an alderman be contested. (Laws 1895, p. 65—m.)

Sec. 5916. **Requisite qualifications to holding office.**—All officers elected or appointed to offices under the city government shall be qualified voters under the laws and constitution of this state and the ordinances of the city. No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office, or who is not a resident of the city. (Laws 1895 p. 65.)

Sec. 5919. **May elect police judge—his jurisdiction.**—The mayor and board of aldermen of cities of the fourth class may,

(j) 126 Mo. 585.
(k) 91 Mo. 445.
(l) 108 Mo. 153; 116 Mo. 582; 33 A. 635.
(m) 108 Mo. 153.

by ordinance, provide for the election of police judges in such cities, who shall be elected at the regular city elections, and who shall, when so elected, have exclusive jurisdiction to hear and determine all offenses against the ordinances of the city in which he was elected: *Provided*, that when such police judges shall be so elected, then the jurisdiction in this article hereinafter conferred on the mayor to hear and determine cases for the violation of city ordinances shall be held to refer to the police judge elected under this section; *provided further*, that in case of the absence, sickness, or disability in anywise of such police judge, or in case of vacancy in such office, the mayor shall perform all such duties until the disability is removed or the vacancy is filled. (Laws 1895, p. 65—n.)

SEC. 5920. **Providing for special elections.**—If a vacancy occur in any elective office, the mayor the person exercising the duties of the mayor shall cause a special election to be held to fill such vacancy, giving at least ten days' notice thereof by publication in some newspaper published in the city, or at least twenty hand bills posted up at as many pulic places within the city: *Provided*, that when any such vacancy occurs within six months of a general municipal election, no election shall be called to fill such vacancy, but the same shall be filled by the mayor or the person exercising the duties of the mayor by appointment; *provided further*, that any vacancy in the office of alderman which may occur within said six months preceding a general municipal election shall be filled in such manner as may be prescribed by ordinance. If a vacancy occur in any office not elective, the mayor shall appoint a suitable person to discharge the duties of such office until the first regular meeting of the board of aldermen thereafter, at which time such vacancy shall be permanently filled. (Laws 1895, p. 65.)

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## VILLAGES.

### ARTICLE VI.

SEC. 6005. **Corporate powers vested in trustees.**—The corporate powers and duties of every village so incorporated shall be vested in a board of trustees, to consist of five members, unless such town shall contain more than twenty-five hundred inhabitants, in which case such board shall consist of nine members; the first board of trustees shall be appointed by the county court, at the time

(n) 60 A. 341.

of declaring such town incorporated, who shall continue in office until their successors are elected and qualified; and such successors shall be chosen by the qualified electors residing in such town, on the first Tuesday after the first Monday of April in every year, in the manner hereinafter provided. (R. S. 1889, § 1667—o.)

SEC. 6006. **Qualification of trustees.**—No person shall be a trustee who shall not have attained the age of twenty-one years; who shall not be male citizen of the United States; who shall not be an inhabitant of the town at the time of his election, and reside therein for one whole year next preceding; who shall not be a householder within the limits of such town; and every trustee shall hold his office for the term of one year, and until a successor is elected and qualified. (R. S. 1889, § 1668.)

SEC. 6046. **Vacancies.**—All vacancies in the board of trustees shall be filled by a special election ordered by the chairman of the board, after ten days' public notice thereof being given. (R. S. 1889, § 1705.)

SEC. 6047. **Judges of election.**—Each board of trustees shall, as often as may be necessary, appoint three qualified voters as judges of the election, to superintend and conduct all elections for trustees, or other town officers required to be elected, and such trustees shall supply all vacancies which may happen in the office of judges of election. (R. S. 1889, § 1706.)

SEC. 6048. **Notice of election.**—The judges of election shall give public notice of the time and place of holding each election by advertisement published in some newspaper published in their town, or by hand-bills put up in six public places in such town, not less than ten nor more than twenty days previous to the election. (R. S. 1889, § 1707.)

SEC. 6049. **Judges elected by bystanders.**—If, on any day appointed for holding any election, any of the judges shall fail to attend the election, the electors present may appoint a judge or judges of election, to hold such election, who shall be qualified as required by this article; and all elections shall be by ballot. (R. S. 1889, § 1708.)

SEC. 6050. **Qualification of voters.**—All male persons of the age of twenty-one years, residing within the limits of any incorporated town or city, and who shall have resided within the same for sixty days next preceding an election, if otherwise qualified by the constitution and laws of this state, shall be entitled to vote at all elec-

(o) 79 Mo. 603.

25804

tions of town officers; and no property qualification shall be required of any person to render him eligible to any office in any city or incorporated town. (R. S. 1889, § 1709.)

Sec. 6051. **Clerk of election.**—The judges of election shall appoint a clerk, who shall write down the names of all persons whose votes shall be received, and the names of those whose votes are rejected, in separate columns. (R. S. 1889, § 1710.)

Sec. 6052. **Open and close of polls.**—The election shall be kept open from seven o'clock in the forenoon until six o'clock in the afternoon. After the election is closed, the judges shall examine the ballots, and the duly qulified persons who shall have received the highest number of votes shall be declared duly elected trustees. (R. S. 1889, § 1711.)

Sec. 6053. **Cases of tie.**—In case of a tie, the judges shall determine the election between the persons so having an equal number of votes by lot, and the judges shall make out and deliver to each person elected as trustee a certificate of his election. (R. S. 1889, § 1712.)

Sec. 6054. **Proceedings in case of failure to elect officers.**—In case of the failure of any election of trustees or other officers, a majority of the trustees then in office, or any justice of the peace of the township in which said town or village is situated, may cause the election to be held on any other day. (R. S. 1889, § 1713.)

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## TO FRAME SPECIAL CHARTERS.

### ARTICLE XV.

Sec. 6359. **City of over 100,000 may frame charter—procedure—amendments.**—Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state, by causing a board of thirteen freeholders, who shall have been for at least five years qualified voters thereof, to be elected by the qualified voters of such city at any general or special election, which board shall, within ninety days after such election, return to the chief magistrate of such city a draft of such charter signed by the members of such board, or a majority of them. Within thirty days thereafter such proposed charter shall be submitted to the qualified voters of such city at a general or special election, and if four-sevenths of such qualified voters voting thereat shall rat-

ify the same, it shall, at the end of thirty days thereafter, become the charter of such city and supersede any existing charter and amendments thereof. A duplicate certificate shall be made setting forth the charter proposed and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. Such charter so adopted may be amended by a proposal therefor made by the law-making authorities of such city published for at least thirty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language, and accepted by three-fifths of the qualified voters of such city voting at a general or special election, and not otherwise; but such charter shall always be in harmony with and subject to the constitution and laws of the state. A duplicate certificate shall be made, seting forth such amendment and its ratification, which shall be signed by the chief magistrate of such city and authenticated by its corporate seal. One of such certificates shall be deposited in the office of the secretary of state, and the other, after being recorded in the office of recorder of deeds for the county in which such city lies, shall be deposited among the archives of such city, and all courts shall take judicial notice thereof. (R. S. 1889, 1840.)

SEC. 6362. **Time for electing board—notice.**—Whenever the law-making authorities of any such city shall deem it advisable for such city to frame a charter for its own government as aforesaid it shall, by ordinance, fix a time for holding an election for such board of thirteen freeholders, which may be at a general city election, or at any other time, and cause notice of such election to be published for at least twenty days in three newspapers of largest circulation in such city, one of which shall be a newspaper printed in the German language. (R. S. 1889, § 1843.)

SEC. 6363. **Election for adopting charter—notice.**—Upon the draft of such charter being returned to such chief magistrate as aforesaid, the law-making authorities of such city shall forthwith fix the time for holding an election at which such proposed charter shall be submitted to the qualified voters of such city, which may be at a general city election or at any other time, and cause notice of such election to be published for at least twenty days in three new

25805

papers of largest circulation in such city, one of which shall be a newspaper printed in the German language. At such election the form of the ballots may be "for the charter" followed by sufficient space to the right thereof, on which may be written or printed the words *yes* or *no*, in accordance with the choice of the person voting such ballot. In the event of any alternative section or article being presented for the choice of the voters, any form of ballot may be used which will clearly indicate the choice of the person voting such ballot between such alternative sections or articles. (R. S. 1889, § 1844.)

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## IN CITIES HAVING SPECIAL CHARTERS.

### ARTICLE XV.

SEC. 6374. **Elections by ballot.**—All elections under this article shall be by ballot and continue for one day only. (R. S. 1889, § 1855.)

SEC. 6375. **Opening and closing polls.**—The polls shall be opened at six o'clock in the morning and be closed at seven o'clock in the evening, and shall not be closed during that time under any pretext whatever. (R. S. 1889, § 1856.)

SEC. 6376. **Judges of election — returns, certification and canvassing.**—Judges of election shall be qualified voters of such city, and three of them shall be appointed by the law-making authorities of such city for each precinct, and shall take an oath to faithfully and impartially discharge their duties. At the close of the polls they shall forthwith proceed to ascertain and certify the result of the election, in the presence of so many of the candidates or other persons of all parties indiscriminately as can conveniently be accommodated in the room selected for that purpose, and make return of the same to the city clerk of such city: *Provided*, that there shall never be less than ten voters present at any count, if so many desire to be present. On the day succeeding that on which any election shall be held under this article, or as soon as the returns of any such election shall be made to him by the judges thereof, it shall be the duty of the city clerk to call in two justices of the peace, and he shall, in connection with such justices of the peace, proceed to canvass and verify the returns of the judges and clerks of any such election, and shall certify the result to the chief magistrate of such city. (R. S. 1889, § 1857.)

SEC. 6377. **Election precincts—appointment of clerks.** The law-making authorities of such city shall, by ordinance, divide

such city into convenient precincts, and the judges for each precinct shall be resident and qualified voters of such precinct, and shall, before opening the polls, appoint two suitable persons, qualified voters of the precinct, to act as clerks of the election, who shall take an oath to faithfully and impartially discharge their duties. (R. S. 1889, § 1858.)

SEC. 6378. **Notice of polling places.**—All elections under this article shall be held in each precinct at such place therein as the chief magistrate of such city may direct, who shall, by proclamation, give ten days' notice by publication in at least two of the daily papers of such city designating the place in each precinct where the polls will be kept open. (R. S. 1889, § 1859.)

SEC. 6379. **Chief of police to provide polling place.**—It shall be the duty of the chief of police in such city, under the direction of the chief magistrate of such city, to provide a suitable place in each precinct for holding the election. (R. S. 1889, § 1860.)

SEC. 6380. **Notification of judges, etc.**—The city clerk of such city shall, at least three days before the day set for holding an election under this article, cause notice of their appointment to be given to the judges, and to the judges of each precinct he shall deliver two ballot-boxes and the necessary tally-sheets, together with the registration lists containing the names of the qualified voters of said precinct, and blank poll-books with necessary certificates written or printed in blank thereon. If any person so appointed judge declines or neglects to serve, the law-making authorities of such city, if in session, shall appoint another judge to serve in his stead. If the law-making authorities are not in session, the chief magistrate of such city shall fill the vacancy. If any vacancy is not filled, or if any person appointed judge fails to be present at the place of election, or, being present, declines to serve, a majority of the qualified voters then and there present may elect a qualified person to act as judge of election. (R. S. 1889, § 1861.)

SEC. 6381. **Judge or clerk becoming disqualified—place, how filled.**—If any judge or clerk of the election, after entering upon the discharge of his duties, shall by the sickness of himself or family, or other personal disability, be unable or fail for any reason to complete the performance of his duties, another may be appointed in his place; if a judge, by a majority of the qualified voters present; if a clerk, by the judges. In such case, the person appointed shall take an oath to faithfully and impartially discharge his duties, and the fact of the appointment and the time when it took place shall be noted in the poll-books. (R. S. 1889, § 1862.)

25806

SEC. 6382. **Receiving ballots — rejected ballots.** — The judges shall receive the ballot of each qualified voter offering to vote, and deposit such ballot in the ballot-box, which box shall not be opened until the polls are closed. The clerks shall enter in the poll-books the name of any person voting, and that of any person whose vote is rejected, and opposite thereto note the fact of such rejection. Rejected ballots shall be deposited in a separate box, with the name of the voter indorsed thereon. The judges shall, before depositing the ballot of any voter in the ballot-box, mark thereon the number, which number shall correspond with the number opposite the name of the person voting, on the poll-books. (R. S. 1889, § 1863.

SEC. 6383. **Examining voter's ballot a misdemeanor.** — No judge or clerk of election shall examine, or suffer any one to examine, the ballot of any voter handed in to be deposited in the ballot-box, before placing the same therein, or permit any person other than the voter handing in said ballot, or one of the judges, to handle the same, or allow any person other than the judges to handle a ballot-box. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. A separate count and certificate of rejected ballots, if any, shall be made and returned as aforesaid. (R. S. 1889, § 1864.)

SEC. 6384. **Disposition of ballots when counted.** — The ballots shall, as they are counted, be strung on a string or wire by the judges, and, at the close of the count, be placed in the ballot-box, which shall be locked up and forthwith delivered by the judges to such city clerk. (R. S. 1889, § 1865.)

SEC. 6385. **Stealing ballot-box makes election void — new election.** — If any ballot-box shall, at any election under this article, be seized and carried away, so that the ballot therein cannot be counted, the whole election shall thereby become void, and a new election shall be ordered by the chief magistrate of such city. (R. S. 1889, § 1866.)

SEC. 6386. **Registration books, form of oath.** — The city clerk of such city shall make out blank books of registration of voters in each precinct and deliver the same to the acting officers of registration of such city, in their respective precincts, and in the books for this purpose furnished to such officers of registration, there shall be printed, or written, the oath as follows, to wit: "We do solemnly swear that we will support the constitution of the United States and the constitution of the state of Missouri, and that we are qualified voters of the city of ———," filling in the name of such city and fol-

lowed by space sufficient for every voter to subscribe his name and place of residence, giving the street and number, if the house be numbered; and when any person subscribes said oath by his mark, his signature shall be witnessed by such officer of registration by signing his name opposite thereto. (R. S. 1889, § 1867.)

SEC. 6387. **Registration of voters, notice of office hours.** The acting chief officer of registration of such city shall, after the fixing of a time for holding an election for such board of thirteen freeholders by the law-making authorities of such city, cause a registration of the qualified voters of such city to be made at a time to be designated by him, and shall give five days' notice by publication in three city papers for five days before the time designated, of the time and place at which each registering officer in their respective precincts will attend for the purpose of registering voters, which time shall begin at least fifteen days before the time fixed for holding such election, and each such registering officer shall attend at such place for four consecutive days, Sunday excepted, and if found necessary, the time may be extended for two additional days at the same places. Said registering officers shall be in attendance for the purpose of registration from 9 o'clock a. m. until 9 o'clock p. m. of each day of registration. (R. S. 1889, § 1868.)

SEC. 6388. **Who may register.**—No person shall be registered as a qualified voter unless he appears before the said registering officer of his precinct and take and subscribe said oath hereinbefore prescribed. Every person registering shall write his Christian name in full, and when written indistinctly the said registering officer, in his presence, shall write his name legibly in a side column: *Provided*, that when any person does not appear before such registering officer, the oath aforesaid, duly sworn and subscribed by him, may be filed with the said registering officer, who, upon satisfactory proof of the party's qualifications as a voter of such city, may enter his name upon the list of qualified voters, and said oath as sworn to shall be preserved with the books of registration. Each such registering officer shall have power to administer oaths to all persons appearing before the said registering officers or board of revision; and every such registering officer shall have power to examine parties and witnesses touching the qualification of any party applying for registration; and if it shall appear that such party is disqualified under the constitution of this state, he shall not be registered as a qualified voter. The said registering officer shall keep a list of persons thus rejected, and shall note every appeal from his decision. Every person who shall become

a qualified voter before the next ensuing election shall be deemed and registered as a qualified voter. (R. S. 1889, § 1869.)

SEC. 6389. **Board of revision.**—On Thursday, Friday and Saturday preceding the seventh day before any election under this article, the said officers of registration, or a majority of them, shall meet at the court-house of such city as a board of revision. They shall pass upon the claims of all persons asking to be registered, and who shall not have been registered, and also upon all objections to persons who have been registered as qualified voters. They shall add to the list in each precinct the names of such persons as are legally entitled to registration, and shall strike therefrom such as have been improperly registered. But the name of no person shall be stricken from the list unless he shall have had at least two days' notice, in writing, of the time and place his case will be heard: *Provided*, that if objection be made at the time such person is registered, no notice shall be necessary, but such objections, with the name of the objector, shall be noted by the said registering officer. (R. S. 1889, § 1870.)

SEC. 6390. **Copy of registration list and original to be at polls.**—Immediately upon the correction of the list aforesaid, each such registering officer shall make out an exact copy of the list of qualified voters in his precinct in alphabetical form, and certified by himself and the said chief registering officer, which shall be delivered to the city clerk of such city, and his receipt taken therefor, and said clerk shall carefully keep the same, and it shall be open to the inspection of any citizen. The city clerk shall, one day prior to any election under this article, deliver to one of the judges of the election in each precinct, the aforesaid copy of the list of voters for such precinct, and take his receipt therefor; and each such registering officer shall also deliver the original list of his precinct to one of the judges of election for such precinct, at least one day prior to the election, and take his receipt therefor. The judge to whom such copy, and the judge to whom the original list shall have been delivered, shall produce the same at the place of voting at the time of opening the polls on the day of the ensuing election, and upon failure to do so, the judge so failing shall be deemed guilty of a misdemeanor, and upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars. (R. S. 1889, § 1871.)

SEC. 6391. **Lists to be returned.**—Within two days after the close of the election, the judges of each precinct to whom the lists aforesaid were delivered shall return to the city clerk the lists re-

ceived from him, and to the said registering officers the original lists received from them, and take up or cancel the receipts therefor given for the same. (R. S. 1889, § 1872.)

SEC. 6392. **Special registration on submission of charter.**—For the purpose of keeping said lists of qualified voters complete, the said officers of registration shall forthwith, upon the time being fixed for holding an election at which such proposed charter shall be submitted to the qualified voters of such city, proceed to register the names of such persons as shall be entitled to registration, and whose names are not upon the lists of either precinct; and such supplemental lists shall be delivered to the city clerk, and the provisions of this article in regard to said general registration shall be applicable to these special registrations, and to the use and control of said lists, as near as may be. (R. S. 1889, § 1873.)

SEC. 6393. **Powers of registering officers.**—The said registering officers and the board of revision are hereby clothed with all powers necessary to carry into effect the provisions of this article. (R. S. 1889, § 1874.)

SEC. 6394. **Registration necessary before voting.**—No person whose name does not appear upon the list of qualified voters, furnished as aforesaid to the judges of election, shall be allowed to vote at any election under this article. (R. S. 1889, § 1875.)

SEC. 6395. **Violating provisions a misdemeanor.**—Any judge or clerk of election, acting officer of registration or city clerk, who shall violate any provision of this article, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars. (R. S. 1889, § 1876.)

SEC. 6396. **Record of those voting.**—When any person shall have voted, the judges of election shall, at the time, write opposite his name on the alphabetical list the word *voted*. (R. S. 1889, § 1877.)

SEC. 6397. **Defacing list of voters a felony.**—Whoever shall wrongfully deface or destroy, or wrongfully take away, any list of voters required by this article to be made or kept, shall upon conviction be punished by imprisonment in the penitentiary not exceeding five years. (R. S. 1889, § 1878.)

SEC. 6398. **Compensation of election officers.** — The judges and clerks of election and registering officers shall receive for services rendered under this article like compensation as they receive for similar services; such compensation and all expenses incurred by the said registering officers, in pursuance of this article, shall be paid out of the treasury of such city. (R. S. 1889, § 1879.)

25808

SEC. 6399. **Extending limits to include other incorporated city.**—Any such city, or any other city of ten thousand inhabitants or less, and having a special charter, after the taking effect of such charter, may at any time or times extend its limits by ordinance, specifying with accuracy the new line or lines to which it is proposed to extend such limits. All courts of this state shall take judicial notice of the limits of such city when thus extended, and all of the steps in the proceeding leading thereto: *Provided*, that should such city by such extension of its territorial limits include any portion of any incorporated city, town or village, such extension shall be made to include the whole territory of such incorporated city, town or village, and upon such extension being made, the corporate existence of such incorporated city, town or village so included in such extension shall, *ipso facto*, cease, and all property and rights of every kind and nature belonging to and vested in such incorporated city, town or village, shall, by operation of law, at once pass to and vest in the city making such extension of its limits, and it shall be the duty of all officers and employes of such incorporated city, town or village having custody or control thereof, to surrender and deliver the same to such city so extending its limits; and such city shall also, by operation of law, become liable to pay all debts and liabilities of such incorporated city, town or village: *Provided, further*, that before such city shall extend its limits so as to include an incorporated city, town or village, four-sevenths of the qualified voters of the incorporated city, town or village voting at such election so desired to be included within the limits of such city shall vote in favor of such proposition, at an election held for that purpose, to be determined in the following manner, to wit: Whenever such city shall desire to include within its limits any incorporated city, town or village, the mayor of such city shall inform the mayor or other chief officer of the incorporated city, town or village proposed to be so taken in of its intention to include said city, town or village within the limits; the mayor thereof shall order a special election to determine the wish of said city, town or village, giving twenty days' public notice of the time and place of holding such election, and the purposes for which it is to be held—said election to be governed by the general laws governing said city, town or village in respect to the holding of general elections; and if four-sevenths of the qualified voters voting at such election shall vote in favor of the proposed extension, the mayor shall certify the result to the mayor of such city, and such city may proceed to extend its limits as provided in this section: *Provided*, that if the city, the limits of

which are to be extended, is organized under section 16 of article 9 of the constitution of this state, then the ordinance extending the limits shall, in all cases where the corporate limits are defined in the charter of such city, be in the form of a proposed amendment to the charter of such city, and before the same shall be of any force or effect, it shall be submitted to and accepted by three-fifths of the qualified voters of such city voting at a general or special election, in all respects and in compliance with all the requirements provided for amendments to the charter of such city. (R. S. 1889, § 1880, amended, Laws 1895, p. 54—p.)

SEC. 6257. **Farming lands, disincorporation of.**—In all cases where farming lands, or lands not laid out in town or city lots, or used for town or city purposes, or included within the corporate limits of any town, city or municipality of this state now containing or which may hereafter contain twenty thousand inhabitants or less, existing or operating under a special charter, and where ten of the taxable inhabitants of said town, city or municipality shall petition the council of said town, city or municipality to become disincorporated or detached from the said municipal corporation, it shall be the duty of said council, by ordinance, to submit the question to be voted upon at either a general or special election called for that purpose; and if at said election a majority of the qualified voters of said town, city or municipality, voting at said election, vote in favor of disincorporating or detaching said lands, then the council of said town, city or municipality shall declare the said land disincorporated or detached from the said municipality, and the same shall not thereafter be included in or be a part thereof: *Provided, however,* that in all cases where the said town, city or municipality has any outstanding debts, liabilities or obligations, said lands shall not be disincorporated or detached till the owner or owners thereof shall have paid into the town, city or municipal treasury their just and proper proportion of such debts, liabilities or obligations. (R. S. 1889, § 1901.)

SEC. 6292. **City limits may be extended by ordinance.**—Any city now containing, or which may hereafter contain, more than twenty thousand and less than two hundred and fifty thousand inhabitants,* organized under special or local laws, may extend its limits by an ordinance specifying with accuracy the new line or lines to which it is proposed to extend such limits. All courts of this state

(p) 127 Mo. 436; 120 Mo. 67.

*For cities of 10,000 inhabitants or less, see section 6399, R. S. 1899.

25809

shall take judicial notice of the limits of said city when thus extended, and of all the steps in the proceedings leading thereto. (R. S. 1889, § 1770.)

Sec. 6295. **Disposition of acquired territory—qualified voters.**—When territory is annexed to any city pursuant to section 6292, the common council shall, by ordinance, organize the same into a new ward or wards, or attach the same to some existing ward or wards long enough before the next ensuing general city election to enable electors in such annexed territory to register, and all other proper steps to be taken according to law, so that the electors of such annexed territory may have full opportunity to register and vote at such election. Actual residents of any territory at the time of annexation thereof to any city as herein provided shall, if otherwise qualified, be qualified electors of the city, and be eligible to any office therein at the next general city election following such annexation. In case of redistricting or division of the city into wards, creation of any new ward or wards, or change of boundary in any ward or wards, every qualified elector residing in any ward at any general city election next thereafter, duly registered, shall be a qualified voter of such ward, and nothing in this article contained shall be so construed as to prevent any elector from voting or being eligible to any office by reason merely of such redistricting or division or creation of any new ward or wards, or change in the boundary of any ward or wards. (R. S. 1889, § 1773.)

Sec. 6296. **Change not to be made, when.**—Territory shall not be annexed to any such city within four months next preceding any general city election, nor shall there be a redistricting or division of the city into wards, or change of boundaries of any ward or wards, or creation of any new ward or wards, within two months next preceding any general city election. (R. S. 1889, § 1774.)

Sec. 6297. **Numbering wards — territory.** — All wards which may hereafter be established shall be composed of adjacent and compact territory, and the several wards at the time of redistricting shall contain as nearly an equal number of inhabitants as may be practicable. The wards shall be numbered consecutively from one up to the highest number thus established. (R. S. 1889, § 1775.)

Sec. 6298. **Election of aldermen.**—Whenever any change in the number of wards or alteration in the boundaries of any ward shall be made, or new wards shall be established, there shall be no election of aldermen for such wards until the general election for corporation officers. (R. S. 1889, § 1776.)

## CONSOLIDATION OF CITIES.

### ARTICLE XXI.

SEC. 6502. **Adjoining cities may consolidate.**—When two or more cities in this state adjoining and contiguous to each other in the same county shall be desirous of being consolidated, it shall be lawful for them to consolidate under one government of the highest class under which either of said cities is organized, and take the name of said city, in the manner and subject to the provisions hereinafter prescribed. (Laws 1893, p. 109.)

SEC. 6503. **County court to order election, how and when.**—Whenever one hundred tax-paying freeholders of each of such cities shall petition the county court to order an election for the purpose of voting on the consolidation of such cities into one city, the county court, at the next regular or special term of said court, shall order an election to be held at the usual voting places of the cities on the same day, not less than ten nor more than thirty days after such order is made. The clerk of the county court shall prepare the poll-books and furnish the ballot-boxes for each of said voting places in said cities, and the ballots; and the court, at the time of ordering said election, shall appoint from among the voters of such cities, respectively, judges and clerks of said elections, and such elections shall be conducted as general elections are required by law to be conducted in cities of such classes. (Laws 1893, p. 109.)

SEC. 6504. **Ballots shall contain what.**—The ballots voted at such elections in favor of consolidation shall have written or printed thereon, "For consolidation, yes;" and the ballots voted at such elections against consolid tion shall have written or printed thereon, "For consolidation, no." (Laws 1893, p. 109.)

SEC. 6505. **Election returns, how certified—vote necessary—expense of election.**—The judges and clerks of such elections, after being sworn, shall receive and count all votes cast, and certify the same, and return the ballots, poll-books and tally-sheets to the clerk of the county court without delay, and after the same shall be received by the county clerk, he shall forthwith call to his assistance the mayors or acting mayors of such cities, and one judge of the county court, and in the presence of such officers as shall attend, examine said returns of said elections and declare the result, and certify the same to the council or board of aldermen of each of said cities; and

25810

if it shall appear that a two-thirds majority of the votes cast in each one of said cities at such election shall be in favor of consolidation, the certificate of the clerk shall be recorded in the journal of the council or board of aldermen of each of said cities, and consolidation of such cities thereafter be consummated: *Provided*, that no such election shall be called until a bond shall have been given to the city in which said election is to be held, in double the amount of the probable cost of such election, by the citizens of such city, and approved by the county court, such bond to be conditioned that in the event of a failure of such city voting on said proposition to approve the same by the necessary two-thirds majority, the said bondsmen shall pay to said city all the expenses of said city incident to such election. (Laws 1893, p. 109.)

SEC. 6506. **Duty of county clerk—wards—election of officers, how ordered, etc.**—The clerk of the county court, in record book of said county, shall record a copy of the certificate of said elections of consolidation of each of said cities, and the county court shall, at its next regular, adjourned or special session, divide the territory of the cities voting in said election into wards, without regard to original corporate limits between such cities, which wards shall be contiguous and compact in form, and as nearly equal in population as practicable, and the county court shall order an election for two councilmen in each of the wards of said consolidated city. The one receiving the highest number of votes at said election in each of said wards respectively shall hold his office one year after the next general election, and the one receiving the next highest number of votes in each ward shall hold his office until the next general election of city officers. The court shall order the election of mayor, city marshal, city attorney, recorder, assessor, treasurer and other elective officers, who shall hold their offices respectively until the next general election of city officers; and upon the election and qualification of such officers aforesaid for such consolidated city, the offices of the cities consolidated shall at once become vacant, and shall deliver up and turn over all records, papers and properties to the officers of the consolidated city; and all ordinances in force in each municipality as may consolidate under the provisions of this article, at the time of such consolidation, shall be and remain in force until changed or repealed by the consolidated city. (Laws 1893, p. 109.)

SEC. 6507. **Election governed by laws in force at the time.**—Such elections shall be conducted in conformity with the election laws now in force. (Laws 1893, p. 109.)

## CITIES, TOWNS AND VILLAGES ALLOWED TO INCUR INDEBTEDNESS.

ARTICLE XIII.

SEC. 6350. **Cities allowed to incur indebtedness.**—The various cities, towns and villages in this state, whether organized by special charter or under the general laws of the state, may contract a debt or debts in excess of the annual income and revenue for any such year, for any purpose authorized in the charter of such city, town or village, or by any general law of the state, upon the assent of two-thirds of the legal voters of such city, town or village voting at an election held for that purpose: *Provided*, such indebtedness so to be contracted shall not, with the existing indebtedness of such city, town or village, exceed in the aggregate five per cent. on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for state and county purposes previous to the incurring of such indebtedness; *and provided further*, that the proper authorities of every such city, town or village incurring such indebtedness shall, before or at the time of doing so, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting same. (R. S. 1889, § 1947—q.)

SEC. 6351. **Election to be held—notice.**—For the purpose of testing the sense of the voters of any incorporated city, town or village upon a proposition to become indebted or to increse the debt thereof, as contemplated in the next preceding section, the council, trustees or other proper authority of such municipality shall order a special election to be held, of which they shall give not less than fifteen days' previous notice, by publication in some newspaper published therein, or if there be no such newspaper, then by posting up ten written or printed hand-bills in ten public places in such city, town or village. Such election shall be held and judges thereof appointed as in case of other elections in such municipalities. (R. S. 1889, § 1948.)

SEC. 6352. **Ballots, form of.**—The council, trustee, or other proper officers of such city, town or village shall prepare and cause to be printed ballots to be used at such election, which shall be in the following form: "For increase of debt—Yes;" "For increase of

(q) 111 Mo. 365.

25811

debt—No;" the former of which shall be taken as a vote assenting to such increase of debt, and the latter as dissenting therefrom. (R. S. 1889, § 1949.)

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## FOR ISSUE OF BONDS FOR PARK PURPOSES.

ARTICLE VII.

SEC. 6086. **Bonds — corporation may issue.**—Any such park district may, by ordinance of its board of park commissioners, provided for the issue and sale of the bonds of such park district, to raise money with which to pay for any real estate to be purchased or condemned by them for public use, or to improve, adorn or embellish such parks, boulevards or avenues. It shall be sufficient in such ordinance to state that such bonds are to be issued for park purposes, and the amount thereof, giving the exact boundaries of all lands about to be purchased or condemned for park purposes. No such park district shall, at any time, issue or have outstanding bonds to an amount exceeding two per cent. of the assessed value of the taxable real estate lying within such park district. (R. S. 1889, § 1744.)

SEC. 6087. **Election as to issuing bonds—order for, how secured.**—Within twenty days after such ordinance shall have been passed by such board of park commissioners, they shall present a certified copy thereof to the county court of said county, with a statement showing the tract or tracts of land selected by them for parks and proposed to be purchased and improved with the proceeds of said bonds, and the then existing bonded indebtedness of such park district; also, a statement of the assessed value of the taxable real estate within such park district, as shown by the assessment next before the last assessment for state and county purposes, previous to the incurring of such indebtedness. If it shall appear from such statements that the amount of bonds proposed to be issued can be issued without exceeding the limit fixed by this article, such county court shall order an election to be held in such park district, at a date to be fixed by said county court, within forty days thereafter, for the voters in such park district to vote on the proposition for the purchase and improvement of the tract or tracts of land so selected, and for the issue of bonds as proposed in such ordinance. (R. S. 1889, § 1745.)

SEC. 6088. **Election, notice of, how given.**—Such county court shall cause to be published in at least two daily newspapers published in such city, for at least thirty days next before the date fixed for such election, a copy of such ordinance and the order of such

court, with a notice that an election will be held at the date named in such order, for the voters in such park district to vote on such proposition: *Provided, further,* said publication shall contain an accurate description of all lands about to be purchased or condemned for park purposes. (R. S. 1889, § 1746.)

SEC. 6089. **Tickets, form of—two-thirds vote.**—Any voter of such park district intending at such election to assent to such corporation purchasing and improving said property and becoming so indebted, may cast a ballot having written or printed thereon, "For purchase of property and issue of bonds;" any such voter intending to not assent thereto shall cast a ballot having written or printed thereon, "Against purchase of property and issue of bonds." Such election shall be conducted under the direction of the county court, the returns made to and the result thereof ascertained and declared by such county court, as nearly as may be in the manner provided by the laws of this state in case of special elections, held under the order of such court in any county containing such a city. The clerk of such court shall, without delay, certify the result of such election to the board of park commissioners. If two-thirds of the voters voting at such election shall assent to such park district purchasing such property and becoming so indebted by the issue of such bonds, such board of park commissioners shall have authority, within the twelve months next after such election, to issue the bonds of such park district to an amount not exceeding the amount named in such ordinance and order of the county court for the purchase and improvement of said property. (R. S. 1889, § 1747.)

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## CITIES, TOWNS AND VILLAGES UNDER SPECIAL CHARTER AND OF 10,000 INHABITANTS OR LESS.

### TO ISSUE BONDS FOR STREET IMPROVEMENTS, ETC.

### ARTICLE XI.

SEC. 6273. **Bonds, issue of for street improvements, etc., in cities having a special charter and with 10,000 inhabitants or less.**—Every city and town in this state having a special charter and containing ten thousand inhabitants or less shall have and are hereby granted power, authority and right to issue its bonds for the purpose of paving, graveling, macadamizing, guttering and curbing all public streets, alleys, avenues and public highways, and parts thereof, in said city or town. (Laws 1897, p. 49.)

SEC. 6274. **May issue bonds for sewer construction.**—Every such city and town shall have power and authority to issue its

25812

bonds, to an amount not exceeding the limit authorized by the constitution of the state for the purpose of constructing public sewers within the limits of such city or town, and to such outlets outside of such city or town as may be necessary. (Laws 1897, p. 49.)

SEC. 6275. **May issue bonds to construct, etc., water-works, electric light plants, etc.**—Every such city and town shall have power, authority and right to issue its bonds, to construct, maintain and operate or purchase water-works and electric plants to supply such cities or towns and all persons and parties therein with water and light, and may for such purpose acquire, by purchase, or by the exercise of the power of eminent domain, any real estate or personal property which may be necessary for such purpose. (Laws 1897, p. 49.)

SEC. 6276. **Election to increase indebtedness—notice of how conducted.**—For the purpose of testing the sense of qualified voters of any such city or town upon a proposition to become indebted or to increase the debt thereof by issuing bonds for the purpose mentioned in the preceding sections, the council, trustees or other legislative authority of such city or town shall order an election to be held, of which not less than fifteen days' previous notice shall be given by publication in some newspaper published in such city or town. Such election shall be held and judges and clerks thereof appointed as in case of other elections in such city or town, or in such manner and under such regulations as may be prescribed by ordinance. Such special elections may be held at the time and place of a general election, and the judges, clerks and other officers of such general election may act as judges, clerks and other officers of such special election. (Laws 1897, p. 49.)

SEC. 6277. **Form of ballot.**—The council, trustees or other legislative authority of such city or town shall cause to be prepared and printed ballots to be used at such election, which shall be in the following forms:

For increase of debt—Yes.

For increase of debt—No.

The former of which shall be taken as a vote assenting to such increase of debt and the latter as dissenting therefrom. (Laws 1897, p. 49.)

SEC. 6278. **Result of election—denomination and condition of bonds.**—If the proposition for incurring or increasing the debt of any such city or town be carried or consented to by two-thirds of the vote of such city or town voting at an election to be held for that purpose, the council, trustees or other legislative authority of

such city or town may, by ordinance, declare the result of such election and cause such bonds of such city or town to be issued for the amount of such debt or increase of debt, payable to bearer and in denominations of not less than one hundred dollars nor more than one thousand dollars each, payable not exceeding twenty years from date with interest at the rate of not over six per cent. per annum, payable semi-annually, which bonds shall have interest coupons attached thereto; all such bonds to be signed by the mayor, or other chief officer of such city or town, and by the clerk of such city or town, and each bond shall have affixed thereto the corporate seal of such city or town, and the coupon shall be signed by the mayor or other chief officer and city or town clerk, both of which names may be lithographed thereon: *Provided, however*, such bonds shall not be sold for less than par. (Laws 1897, p. 49.)

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## TO LEVY TAX FOR LIBRARY AND BUILDING FUND.

### ARTICLE XIX.

SEC. 6466. **Library fund in cities, when tax may be levied—election, etc.**—When one hundred tax-paying voters of any incorporated city shall petition the mayor and common council asking that an annual tax be levied for the establishment and maintenance of a free public library in such incorporated city, and shall specify in their petition a rate of taxation, not to exceed one mill on the dollar annually, and in cities of over one hundred thousand inhabitants not to exceed two-fifths of one mill annually, on all the taxable property in the city, such mayor and common council shall direct the proper officer to give notice in his next legal notice of the annual election, or special election, which may be called for the purpose of voting on such question, that at such election every voter may vote "for a —— mill tax for a free public library," or "against a —— mill tax for a free public library," specifying in such notice the rate of taxation mentioned in said petition; and if the majority of votes cast on such proposition shall be "for the tax for the free public library," the tax specified in such notice shall be levied and collected in like manner with other general taxes of such incorporated city, and shall be known as the "library fund:" *Provided*, that such tax shall cease in case the legal voters of any such incorporated city shall so determine, by a majority vote, at any annual election held therein. (R. S. 1889, § 1779, amended.)

25813

SEC. 6475. **Proceedings in village or township.**—When y legal voters of any incorporated village or township shall petition e proper authorities, asking that an annual tax may be levied for e establishment and maintenance of a free public library in such lage or township, and shall specify in their petition a rate of taxa- n not to exceed two mills on the dollar, such officers shall, in the xt legal notice of the regular annual election in such village or town- ip, give notice that at such election every voter may vote "for a — mill tax for a free public library," or "against a ——mill tax for free public library," specifying in such notice the rate of taxation entioned in said petition; and if the majority of all the votes cast such village or township shall be " for the tax for a free public brary," the tax specified in such notice shall be levied and collected like manner with other general taxes of said village or township, nd shall be known as the "library fund:" *Provided*, that such tax hall cease in case the legal voters of any such village or township hall so determine, by a majority vote, at any annual election held herein, and the corporate authorities of such villages or townships nay exercise the same powers conferred upon the corporate authori- ies of cities under this article. (R. S. 1889, § 1788.)

SEC. 6476. **Election of directors, etc.**—At the next regu- lar election after any town, village or township shall have voted to establish a free public library, there shall be elected a library board of six directors, one-third for one year, one-third for two years, and one-third for three years; and annually thereafter there shall be elected two directors, who shall hold their office for three years, and until their successors are elected and qualified, which board shall have the same powers as by this article are conferred upon the board of direc- tors of free public libraries in cities. (R. S. 1889, § 1789.)

SEC. 6478. **How library building fund may be created—election, how and when ordered.**—Whenever in any incorpo- rated city which has decided or shall hereafter decide to establish and maintain a public library and reading-room under the provisions of this article one hundred tax-paying voters of any such incorporated city shall petition the proper authorities, asking that an annual tax be levied as an increased rate of taxation for the erection of a free public library building in such incorporated city, and shall specify in their petition a rate of taxation not to exceed one and one-half mills on the dollar annually, and not to be levied for more than five years on all taxable property in such incorporated city, and the board of directors of the free public library of such incorporated city shall

deem it necessary that such library building should be erected, and so express its opinion by resolution, then the proper authorities of such incorp rated city shall in the next legal notice of a regular election in such incorporated city give notice that at such election every voter may vote for an annual increased rate of taxation for —— years of —— mills tax per annum for the erection of a free public library building, specifying in such notice the rate of taxation mentioned in such petition and the period for which it is to be levied, and if two-thirds of he qualified voters of such incorporated city voting at such election shall vote "for the increased tax for the erection of a free public library building" the tax specified in such notice shall be levied and collected in like manner with other general taxes of said incorporated city, and shall be known as "the library building fund," and shall be subject to the exclusive control of said board, and be drawn upon by the proper officers of such city upon the properly authenticated vouchers of said board, and be used for the erection of the library building. The fund hereby provided for the erection of a free public building in any such incorporated city shall be in addition to the annual tax levied for the establishment and maintenance of such free public library. (Laws 1897, p. 50.)

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## COUNTY ELECTIONS.

TO CREATE INDEBTEDNESS FOR ESTABLISHING INSANE ASYLUM IN COUNTIES OF 100,000 OR MORE.

CHAPTER 72—ARTICLE II.

SEC. 4902. **County courts in certain counties authorized to purchase land and maintain insane asylums.**—County courts in counties now containing or that may hereafter contain 100,000 inhabitants or more, are hereby authorized to purchase not exceeding eighty acres of land, and locate, build and maintain thereon an insane asylum. (R. S. 1889, § 517.)

SEC. 4906. **Indebtedness, how incurred, and bonds issued to establish asylum—election on proposition, etc.**—Whenever any number not less than one hundred of the qualified voters of any such county, who are tax payers therein, shall present to the county court of such county a petition, in writing, praying the county court that an election be held to authorize the incurring of an indebtedness and issuing bonds therefor for the purpose of purchasing land and building thereon an asylum for the insane of such county, such county court, upon the presentation of such petition, may, if it so determine, at a regular term thereof, and by order of record of

said court, adjudge it necessary for such county to have an insane asylum, and that it is necessary for such county to incur an indebtedness and issue bonds therefor, for the purpose of purchasing the land and building such asylum, and such county court may at the same term order a special election in said county for the purpose of providing for the incurring of such indebtedness and issuing bonds therefor. In said order for such election there shall be recited the amount and purpose of the indebtedness proposed to be incurred, the length of time for which bonds shall be issued, the rate of interest, the rate of increase of the tax levy to pay the interest and provide a sinking fund to pay the bonds, and the day on which the election is to be held. (New section.)

SEC. 4907. **Duty of county clerk and election commissioners as to election on proposition to incur indebtedness for building and maintaining asylum.**—If there shall be in any county in which the county court thereof orders an election under the provisions of this article, a city having at the time a board of election commissioners, or other like officers, hereafter called election commissioners, whose duty it is to supervise or provide for state and county elections held in such city, it shall be the duty of the clerk of the county court of such county at least thirty days before the day on which the election is to be held, to make and deliver to such election commissioners a certified copy of the order of election made by the county court. After receiving the certified copy of the order for such election, the election commissioners shall divide the wards of such city into election districts so that there shall be not less than one polling place for each 1,000 votes, or fraction of 300 votes, cast at the last previous general election: *Provided*, that no ward shall be without at least one polling place. The said election commissioners shall appoint three judges and two clerks of election for each polling place. The election commissioners shall provide the places, booths and appliances, and furnish the proper registration lists, poll books, tally sheets, ballots and ballot boxes, and do all the other things necessary on their part for holding the election. After the close of the polls the judges shall count the ballots, and th judges and clerks shall certify in the poll books the number of votes cast for, and the number of votes cast against, the proposition voted upon, and return such poll books, together with the registration lists, tally sheets and ballots to the election commissioners, who shall proceed to canvass the returns and declare and record the result of the election in such city. Within eight days after the election the election commissioners shall make

and deliver to the clerk of the county court a certificate signed by the chairman or chief officer of the election commissioners, and attested by the secretary or clerk, if there be one, setting forth the number of votes cast at each polling place in said city for, and the number cast against, the proposition, and the total vote for and against the proposition, and the number of votes by which said proposition was carried or defeated in such city. (New section.)

SEC. 4908. **County court authorized to divide township into election districts, when—elections, how conducted.**—For the purpose of holding such election the county court shall have power to divide any township in such county outside of any city in such county which has election commissioners, into two or more election districts, and define the boundaries thereof, and designate the places of holding the election; and the county court shall appoint three judges of election for each of the polling places outside of such city, and the judges for each polling place shall appoint two clerks. After the polls are closed the judges shall count the ballots and the judges and clerks shall certify in the poll books the number of votes cast for, and the number of votes cast against, the proposition, and return the poll books, tally sheets and ballots to the clerk of the county court, who shall examine the returns and cast up the votes for and against the proposition as provided by law for general elections. (New section.)

SEC. 4909. **Notice of election to specify what—and how given.**—Said county court shall cause at least twenty days' notice of said election to be given by publication in at least two weekly newspapers published in the county. And if there be a city in such county having election commissioners, such election commissioners shall cause at least twenty days' notice of said election to be given by publication in two daily newspapers published in such city. Such notice shall specify the amount of the proposed indebtedness for which bonds are to be issued and the object and purposes thereof, and the length of time for which the bonds shall be issued, the rate of interest, the rate of increase of the tax levy, the day on which the election is to be held, and the location of the polling places: *Provided*, that such election may be held at the same time of holding a general election for state and county officers, and in such case such election shall be conducted in all respects as state and county elections are conducted so far as applicable. (New section.)

25815

SEC. 4910. **Form of ballot and vote how construed.**—The ballots to be prepared and printed for use at such election shall be in the following form:

For incurring debt and issuing bonds for asylum.....Yes.

For incurring debt and issuing bonds for asylum.....No.

A ballot cast containing the former of which shall be taken as a vote assenting to incurring the debt and issuing the bonds therefor, and if containing the latter, as dissenting thereto. (New section.)

SEC. 4911. **Elections to be conducted in accordance with general law, etc.**—The election shall be conducted in the manner provided by law for state and county elections in force at the time so far as applicable and not contrary to, or inconsistent with, the provisions and scope of this article. The judges and clerks shall be sworn as required by law, and the polls shall open at 6 a. m. and close at 7 p. m. (New section.)

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## TO CREATE INDEBTEDNESS FOR BUILDING COURT HOUSE OR JAIL.

CHAPTER 83—ARTICLE III.

SEC. 5172. **Indebtedness for building court-house or jail, how incurred.**—Whenever it shall become necessary for any county in this state to incur any indebtedness, for the purpose of building a court-house or jail, in excess of the total income and revenue of such county provided for any one year, as limited by law, it shall be lawful for any number not less than one hundred of the qualified voters of such county, who are tax-payers therein, to present to the county court of such county a petition and application, in writing, setting forth the object and purposes for which the indebtedness is desired to be created, and whether it is desired to issue bonds for such indebtedness, or to pay the same by the direct levy of taxes for that purpose during a given number of years, stated in such petition, and praying that an election be held to authorize the incurring of such indebtedness and the levying of such taxes; upon the presentation of such petition it shall be the duty of the county court of such county, at a regular term thereof, to order a special election for the purpose set forth in such petition, and to make an entry of such order on the records of the court. (R. S. 1889, § 852—r.)

(r) 115 Mo. 20; 97 Mo at 308.

SEC. 5173. **Court to give notice of election, what to specify.**—Said court shall cause at least twenty days' notice of said election to be given by publication in some newspaper published in the county, or, if there be no newspaper published therein, by written or printed hand-bills, posted in three public places in each voting precinct in such county, twenty days prior to the day of election. Such notice shall pecify the amount of the debt, the length of the time for which bonds shall be issued, the rate of interest, the object and purposes thereof, the rate of the increase of the tax levy, and the day on which the election is to be held: *Provided*, that such election may be held at the same time of holding the general election for state and county officers. (R. S. 1889, § 853.)

SEC. 5174. **Form of ticket.**—Those of the qualified voters who favor the creation of the indebtedness for the purposes specified in the notice may, if the proposition be to issue bonds at such elections, deposit a ticket, written or printed, in the following form: "Appropriation of $—— for the purpose of ——, yes;" and those who are opposed to the creation of said indebtedness may deposit a ticket, written or printed, in the following form: "Appropriation of $—— for the purpose of ——, no;" and if the proposition be to pay such indebtedness by the direct levy of taxes for a given number of years without bonds, those of the qualified voters who favor the creation of the indebtedness on such plan may at such election deposit a ticket, written or printed, in the following form: "In favor of an indebtedness of $—— for the purpose of building a court house (or jail), and of an increase of the tax levy of —— cents on the one hundred dollars valuation for —— years to pay the same, yes;" and those who are opposed to the creation of said indebtedness may desposit a ticket, written or printed, in the following form: "In favor of an indebtedness of $—— for the purpose of building a court-house (or jail), and of an increase of the tax levy of —— cents on the one hundred dollars valuation for —— years to pay the same, no." (R. S. 1889, § 854.)

SEC. 5175. **Election, how conducted.**—The election herein provided for shall be held and conducted in the same manner, and the returns thereof made to the county clerk, and the vote counted, in all respects the same as in elections for state and county officers, as far as the laws in relation thereto are applicable, and the county clerk and justices associated with him to count said vote shall certify the result of the election to the county court at its next regular session thereafter. (R. S. 1889, § 855.)

SEC. 5176. **Two-thirds majority—court authorized to issue bonds, etc.**—If it appears from the returns that a majority

25816

of two-thirds of the qualified voters of such county voting at said election voted in favor of incurring said indebtedness, the county court shall make an order reciting the election and the result of the vote for and against the proposed indebtedness, and if the result shall be in favor of issuing bonds therefor, the court, by said order, shall direct the issue of bonds for the amount of said debt, and also the levy of an annual tax for the payment of interest thereon, and also an annual tax in the nature of a sinking fund for the payment of such portion of the principal each year as will extinguish the entire debt within twenty years from the date of contracting the same; and if the result of such election be in favor of paying said indebtedness by the direct levy of a tax therefor during a given number of years, the county court, by said order, shall direct a levy of the rate of tax voted for during the number of years voted for at said election; and at the regular time of levying county taxes in each of said years, the county court shall, in addition to other taxes, levy and cause to be extended upon all property subject to taxation in said county said increase rate of tax so voted for said purpose. (R. S. 1889, § 856.)

Sec. 6709. **Court-house and jail to be erected, etc.**— There shall be erected and maintained in each county, at the established seat of justice thereof, a good and sufficient court house and jail. (R. S. 1889, § 3107, amended—g.)

Sec. 6710. **Clerk's and recorder's offices to be erected.** As soon as the court-house and jail shall be erected and the circumstances of the county will permit, the county court may erect all necessary fire-proof buildings for the preservation of the records of the county, at or near the court-house, and may provide the means therefor by an increase of taxation as provided by section 11 of article 10 of the constitution, when authorized so to do by vote of two-thirds of the qualified voters of the county voting at an election held to determine the question, which election shall be under the same conditions and regulated by the provisions of the present statutes relating to the erection of court-houses and jails. (R. S. 1889, § 3108, amended.)

Sec. 6711. **Court-houses and jails may be erected by county seat in conjunction with county, when.** — All county seats which are duly incorporated are hereby authorized, upon such terms as may be agreed upon, in conjunction with their respective counties, to erect and maintain court-houses and jails in such county seats for the joint use of such county seats and counties, and all authority now existing under the law or that may hereafter be conferred

(q) After county seat is established, county court cannot transact business elsewhere. 46 Mo. 60. County buildings destroyed. 65 Mo. 265.

on the counties of this state, for the purpose of providing the revenue for erecting and maintaining the buildings herein provided for, may be exercised by the counties jointly with their county seats: *Provided*, that for the purposes of this act such county seats shall be authorized to issue and negotiate interest-bearing bonds in an amount which, together with existing indebtedness, shall not exceed five per cent. of the assessed taxable valuation of such county seats as shown by the last annual assessment had therein, such bonds not to bear a higher rate of interest than eight per cent.; *and provided further*, that in no case shall such bonds issue or indebtedness be created unless authorized by the assent of two-thirds of the qualified voters of such county seats voting on the proposition at an election to be held therein for that purpose. (R. S. 1889, § 3109—r.)

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## TO DIVIDE OR FORM NEW COUNTIES AND TO REMOVE COUNTY SEATS.

CHAPTER 97—ARTICLE I.

SEC. 6705. **Proceedings for dividing or forming new counties.**—The question of dividing any county or of striking from any county any portion thereof, whether for the purpose of forming a new county or of adding to any other county, or of adding thereto any portion of any other county, may, by the order of the county court of any county to be affected, made on the petition therefor of not less than one hundred legal voters of such county, duly entered of record, and setting out fully the proposed change, the reason and object thereof, and the boundaries of such county if the change were made, be submitted to a vote of the people of the county, being the qualified voters thereof, at the next general election after the making of such order, a certified copy thereof being first published in some newspaper of the county, if there be one, and if not, then in some newspaper of an adjoining county, for four weeks immediately preceding such election. The ballots to be voted on such question shall have written or printed thereon: "Proposed change in ——— county boundary, yes;" or "Proposed change in ——— county boundary, no"—the name of the county being inserted; and such votes shall be canvassed and certified as in the case of votes for representative; and if the vote, as canvassed in the county, shows a majority of the qualified voters of the county voting on the question to have voted for the proposed change, the county clerk shall, at the time of certifying such returns to the secretary of

(r) 103 Mo. 192; 105 Mo. 382; 128 Mo. 188.

25817

state, also certify to that officer two copies of said order of the county court, and of said publication, and of the affidavit of the publisher, one copy to be retained on file in said secretary's office, and one copy, with a certified statement of the vote on such question, to be by him transmitted to the senate or house of representatives during the first ten days of the first session of the general assembly after the receipt thereof, and thereupon the general assembly may take such action in the premises, subject to the provisions of the constitution, as may seem best. No election authorized under the provisions of this section shall be held upon substantially the same proposition oftener than once in five years. (R. S. 1889, § 3106.)

SEC. 6712. **County seat destroyed by erosion of river bank—selection of new one.**—Whenever the land on which the seat of justice of any county in the state of Missouri is located, shall have caved into a river by reason of the erosion of the banks of such river, so that said county may be without a seat of justice, and one-fourth of the voters of any such county shall petition the county court for the location of the seat of justice of such county at any designated place, the county court shall make an order directing that the proposition to locate such seat of justice at the place named in the petition be submitted to the qualified voters of the county at a general or special election to be held therein, and shall also order that public notice be given of such proposed election by publication thereof in some newspaper published in said county, if any such there shall be, and also by directing the sheriff of such county to put up in hand-bill form, printed copies of such order in not less than three of the most public places in each township in said county, not less than thirty days before the election at which such proposition is to be voted upon, all of which notices shall be published and continued, so far as the circumstances will permit, up to the day of such election. (R. S. 1889, § 3110.)

SEC. 6713. **Commissioners to select site.**—If it shall appear by such election that a majority of the legal voters of such county voting on the proposition are in favor of the location of the county seat of such county at the place designated, then the county court shall appoint five commissioners to select a site whereon to locate the seat of justice. (R. S. 1889, § 3111.)

SEC. 6714. **Special election.**—If the petitioners so request in their petition, the county court shall order a special election for the purpose of enabling the voters to vote upon the question as mentioned in this act, and the petitioners shall pay the cost of such special election, but not more than one special election shall be ordered in any

such county in any one year, but the question may be submitted to the voters at both a general and special election in the same year. (R. S. 1889, § 3112.)

SEC. 6715. **Laws applicable to election.**—At any such election, the voting, making returns and casting up the result shall be governed in all respects by the laws applicable to general elections for county officers. (R. S. 1889, § 3113.)

SEC. 6738. **Removal of county seat—vote of people.**—Whenever one-fourth of the voters of any county shall petition the county court for a removal of the seat of justice of such county to any other designated place, the court shall make an order directing that the proposition to remove such seat of justice to the place named in the petition be submitted to the qualified voters of the county at the next general election to be held therein, and shall also order that public notice be given of such proposed removal, by publication thereof in some newspaper printed in the English language in said county, if any such there shall be, and also by directing the sheriff of said county to put up, in hand-bill form, printed copies of such order, in not less than three of the most public places in each township in said county, not less than thirty days before the election at which such proposition is to be voted upon, all of which notices shall be published and continued, so far as the circumstances will permit, up to the day of such election. (R. S. 1889, § 3136—s.)

SEC. 6739. **Persons not entitled to vote.**—No citizen residing in any territory attached to said county for any purpose shall be permitted to vote for or against the removal or locating of a county seat, nor shall his signature to a petition praying for a removal of a county seat be regarded by the county court. (R. S. 1889, § 3137.)

SEC. 6740. **Adoption of proposition for removal—two-thirds vote—commissioners.**—If it shall appear by such election that two-thirds of the legal voters of said county are in favor of the removal of the county seat of such county, then the county court shall appoint five commissioners to select a site whereon to locate the seat of justice. (R. S. 1889, § 3138—t.)

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## DRAMSHOP—LOCAL OPTION.

CHAPTER 22—ARTICLE III.

SEC. 3027. **Election to determine whether liquors shall be sold in county.**—Upon application by petition, signed by one-

(s) 41 Mo. 44; 44 Mo. 207; 54 Mo. 391; 130 Mo. 90. See notes to section 12, article 10 of constitution; also, section 2, article 9.

(t) 54 Mo. 391; 95 Mo. 44; 128 Mo. 93; 130 Mo. 90.

25818

tenth of the qualified voters of any county who shall reside outside of the corporate limits of any city or town having, at the time of such petition, a population of twenty-five hundred inhabitants or more, who are qualified to vote for members of the legislature, in any county in this state, the county court of such county shall order an election to be held in such county at the usual voting precincts for holding any general election for state officers, to take place within forty days after the reception of such petition, to determine whether or not spirituous and intoxicating liquors, including wine and beer, shall be sold within the limits of such county lying outside of such corporate limits of such city or town. Such election shall be conducted, the returns thereof made and the result thereof ascertained and determined in accordance in all respect with the laws of this state governing general elections for county officers, and the result thereof shall be entered upon the records of such county court, and the expenses of such election shall be paid out of the county treasury, as in case of elections for county officers: *Provided*, that at an election ordered under the provisions of this section, no one shall be entitled to vote who is a resident of any incorporated town having a poulation of twenty-five hundred inhabitants or more, or who is not a qualified voter of such county: *Provided*, that no such election, held under the provisions of this article, shall take place on any general election day, or within sixty days of any general election held under the constitution and laws of this state, so that elections as are held under this article shall be special elections, and shall be separate and distinct from any other election whatever: *Provided further*, that the county court shall determine the sufficiency of the petition presented by the poll-books of the last previous general election. (R. S. 1889, § 4598—u.)

SEC. 3028. **Same in cities of 2,500 or more, when held.** Upon application by petition therefor, signed by one-tenth of the qualified voters of any incorporated city or town in this state having a population of twenty-five hundred inhabitants or more, to the body having legislative functions therein, such body shall order an election to be held in such city, to be voted at by the qualified voters thereof, and no others, to determine whether or not spirituous or intoxicating liquors shall be sold within the limits of such city or town. Such election shall be held within forty days after the receipt of such petition, but not within sixty days of any municipal or state election held in such city; and shall be conducted, the returns thereof made and the result thereof ascertained and determined in accordance, in all re-

(u) Constitutional. 96 Mo. 44; 107 Mo. 78; 110 Mo. 138; 111 Mo. 236, 553. Election under. 30 A. 612; 32 A. 620; 36 A. 58; 44 A. 715. Notice. 75 A. 188. Must be held within forty days. 49 A. 407. Casting up vote. 42 A. 115; 51 A. 299.

spects, with the laws and ordinances governing municipal elections in such city, and frauds perpetrated, and fraudulent voting, at such elections shall be offenses as prescribed for frauds and fraudulent voting at general elections held under the laws of this state, and shall be punished as in such laws provided. The result of such election shall be entered upon the journals or records of the body ordering the same, and the expenses thereof shall be paid out of the treasury of said town in the same manner as the expenses of other municipal elections: *Provided,* that for the purpose of determining the fact of whether or not any town shall be governed by the provisions of this section, such body having legislative functions therein may, under an ordinance thereof, take a census of the inhabitants of such town, and the result of such census shall be entered upon the journals or records thereof, and such entry, or a certified copy thereof, shall be proof of such fact, and shall be filed with the clerk of the county court of the county in which such town is situated. (R. S. 1889, § 4599—v.)

SEC. 3029. **Notice of election, how given.**—Notice of such election shall be given by publication in some newspaper published in the county, and such notice shall be published in such newspaper for four consecutive weeks, and the last insertion shall be within ten days next before such election, and such other notice may be given as the county court or municipal body ordering such election may think proper, in order to give general publicity to the election. (R. S. 1889, § 4600—w.)

SEC. 3030. **Form of ballot.**—All persons voting at any election held under the provisions of this article, who are against the sale of intoxicating liquors, shall have written or printed on their ballots, "against the sale of intoxicating liquors," and all those who are in favor of the sale of such intoxicating liquors shall have written or printed on their ballots, "for the sale of intoxicating liquors:" *Provided,* that if the county court or municipal body ordering such election deem it expedient, they may order that both the above sentences may be written or printed on the tickets to be used and voted at said election, with the further instruction printed on such tickets or ballots—"erase the clause you do not want." (R. S. 1889, § 4601—x.)

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(v) 110 Mo. 138.

(w) Notice. 110 Mo. 138; 33 A. 635; 36 A. 58; 39 A. 393 Election invalid. 30 A. 612; 34 A. 325.

(x) "Qualified voters." 33 A. 635.

25819

## FOR RESTRAINT OF ANIMALS.

CHAPTER 69—ARTICLE II.

SEC. 4783. **Provisions of article suspended until election is held, etc.**—The provisions of this article are hereby suspended in the several counties in this state, until a majority of the legal voters of any county voting at any general or special election called for that purpose, shall decide to enforce the same in such county: *Provided*, that only a majority of the legal voters voting on said question shall be necessary to decide its adoption or rejection. (R. S. 1889, § 360.)

SEC. 4784. **Question of restraining animals, how submitted.**—The county court of any county in this state, upon the petition of one hundred householders of such county, at a general election, and may upon such petition of one hundred householders, at a special election, called for that purpose, cause to be submited to the qualified voters of such county, the question of enforcing, in such county, the provisions of this article. Said petitioners shall state in their petition to said court, what species of the domestic animals enumerated in section one of this article they desire the provisions of this article enforced against, and may include one or more of said animals in said petition; and said court shall cause notice to be given that such vote will be taken, by publishing notice of the same in a newspaper published in such county, for three weeks consecutively, the last insertion of which shall be at least ten days before the day of such election, and by posting up printed notices thereof at three of the most public places in each township in such county, at least twenty days before said election; said notices shall state what species of domestic animals on which the vote will be taken, to enforce the provisions of this article against running at large in such county, which shall be the same as petitioned for to said court. (R. S. 1889, § 361—y.)

SEC. 4785. **Form of ballot—election, how governed.**—There shall be written or printed on each ballot voted at said election, either of the following sentences: "For enforcing the law restraining (insert the name of animals in petition) from running at large;" "against enforcing the law restraining (insert the name of animals in petition) from running at large." Any such election, the voting thereat, making returns thereof, and casting up the result, shall be gov-

(y) Election, notice, jury question, burden of proof. 69 A. 1. Must be submitted to vote. 62 Mo. 188. Returns must be canvassed as returns of other elections. 48 A. 111. Law not operative until publication of result and notice given. 26 A. 368.

erned in all respects by the laws applicable to general elections for state and county purposes. (R. S. 1889, § 362.)

SEC. 4786. **Clerk to give notice of result, when.**—If a majority of the legal voters voting for and against enforcing the provisions of this article shall vote at such election, whether general or special, for enforcing the law restraining the animals named in the petition from running at large, the clerk of the county court shall enter upon the court records the result of said election, and file the papers and returns thereof in his office, and shall immediately give notice of the result of said election by publishing the same in a weekly newspaper published in said county, if there be one, and by causing notice thereof to be posted up in at least three public places in each township in the county; but if a majority of the votes cast at any such election by the legal voters voting for or against enforcing the law are against enforcing the law restraining the animals named in said petition from running at large, no notice of the result shall be given. (R. S. 1889, § 363.)

SEC. 4787. **Notice, posting of.**—It shall be the duty of the sheriff of the county in which any election shall be held under the provisions of this article to post up all notices required to be posted, and the returns of the sheriff posting said notices, together with the proof of publication of the notices required to be published by this article, shall be recorded by the county clerk of the county in which any such election shall be held, and shall be taken and received by all courts of this state as *prima facie* evidence of the posting and publication of said notices. (Laws 1895, p. 40.)

SEC. 4788. **Question of restraining animals in certain townships may be submitted.**—Whenever any five or more townships in one body in any county in the state of Missouri, by a petition of one hundred householders, not less than ten of whom shall be from any one of said townships, petition the county court for the privilege to vote on the question of restraining horses, mules, asses, cattle, goats, swine and sheep from running at large, the same law, governing counties is hereby applied to said townships, and said petitioners shall not be debarred the right to restrain said animals if a majority of the qualified voters of said townships, voting at any general or special election, shall vote in favor of so restraining such animals. Nothing in this section shall be so construed as to debar the right of restraining any two or more species of such animals. (R. S. 1889, § 364, amended, Laws 1893, p. 29.)

SEC. 4789. **Question of restraining swine and sheep in townships on river, when submitted.**—Whenever any one

25820

or more townships in one body in the state of Missouri, that lie adjacent to any river, when one-half or more of said township or of each of said townships are subject to overflow from said river, by a petition of not less than ten householders from such township, or from each of said townships when more than one township petition the county court for the privilege to vote on the question of restraining swine and sheep from running at large, the same law governing counties is hereby applied to said township or townships, and said petitioners shall not be debarred the right to restrain said animals, if a majority of the qualified voters of said township or townships vote in favor of so restraining such animals. (R. S. 1889, § 365.)

Sec. 4790. **Adjoining townships, vote on question of restraining swine and sheep.**—Whenever any five or more townships in one body, in any county in the state of Missouri, have heretofore adopted the laws governing the question of restraining swine and sheep, as provided in this article, then any one or more townships that have not adopted said law, and that are adjoining said five or more townships, in the same or an adjoining county, by a petition of twenty-five householders of each township desiring to adopt said law, petition the county court for the privilege to vote on the question of restraining swine or sheep from running at large, the same laws governing counties are hereby applied to said township or townships, and said petitioners shall not be debarred the right to restrain said animals, if a majority of the qualified voters of said township or townships vote in favor of so restraining such animals. (R. S. 1889, § 366.)

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## CONCERNING ROADS AND HIGHWAYS.

### CHAPTER 151.

Sec. 9661. **Tax levy—taxes to be used for what.**—The county courts of the several counties shall, at the May term thereof, in each year, levy upon real and personal property made taxable by law a tax of not less than five nor more than twenty cents on the one hundred dollars, which levy shall be collected as other state and county taxes, and the amount of money collected as road-tax shall be paid by the collector into the county treausury as other revenues, and the county treasurer shall place the same to the credit of the road district from which said taxes were collected, and shall pay the same to the overseer of said district on the warrants of the county court, and the amount, when so received, shall be used and expended by the overseer in purchasing the necessary tools with which to work the roads

in his district, and materials to build culverts and bridges, not exceeding $50 in value, or in otherwise keeping roads in his district in good order according to the provisions of this chapter: *Provided*, that it shall be the duty of any such county courts, whenever petitioned therefor, in writing, at the regular February term thereof in any year, by any ten resident tax-payers of any such road district, who shall specify in said petition the amount of the increase of the rate of taxation desired, to increase such rate of taxation, for the purposes herein stated, to the amount stated in said petition, [not] above twenty cents on the one hundred dollars, the same to be within the maximum rates prescribed by the constitution, upon the assent of two-thirds of the resident tax-payers voting thereon, at the annual school meeting or meetings constituting any road district, as provided by section 9648, as amended, and upon the receipt of such petition such county court shall cause the road overseer of any such road district to give at least fifteen days' public notice of the time, place and purposes of such election, by five printed or written hand-bills, posted in five of the most public places in any such district; *provided further*, that no road-tax or labor shall be levied on the property or the inhabitants of any city, town or village, the corporate laws of which exempt such persons and property from such road-tax; and it shall be the duty of the county court to take and file in the office of the clerk of said court a bond, with approved surety, from each overseer, in such sum as the court may require, conditioned that said overseer will do and perform all the duties of his office, and account for and pay over all moneys that may come to his hands as road overseer. R. S. 1889, § 7814, amended, Laws 1891, p. 200.)

Sec. 9486. **County court to order road located, when—special election to be held—proceedings.**—Upon the filing of such report and due consideration thereof by the county court, the said court may, if they consider such road or roads to be of public convenience and utility, order the same to be located and established: *Provided, however*, that a majority of two-thirds of the resident tax-payers in such district shall first determine, by an election to be held for the purpose, that they will consent to be taxed upon their real estate in such district, in proportion to the benefits accruing thereto, by reason of the location and construction of such road or roads, and for the purpose of building such road or roads. The said county court shall fix the time and places for holding such election, and shall require the county clerk to give at least twenty days' notice of such election, with the time and places of holding the same, by advertisement in some newspaper published in said county, and by ten written or printed

25821

hand-bills set up in ten public places in the district to be affected thereby, and if there be no such newspaper in such county, then by ten written or printed hand-bills set up in ten public places in such district. The county court shall appoint three judges for each election precinct, and said judges may appoint two clerks to record the names of the persons voting at such election, all of whom shall, before entering upon the discharge of their respective duties, make an affidavit before some competent officer that they will faithfully discharge their duties as such. The voting at such election shall be by ballot. Those favoring the road shall indicate the same by these words written or printed on said ballot, "For the road;" and those opposed to such road shall indicate the same by these words written or printed thereon, "Against the road." Suitable poll-books shall be furnished under an order of the county court for such election; and when said election is held, and within two days thereafter, the judges of said election precinct or precincts shall return said poll-books with an abstract of votes cast, duly certified, to the office of the county clerk, who, in the presence of at least one judge of the county court, shall open said poll-books, ascertain and declare the result. If it shall be found that a majority of two-thirds have voted for such road, the county court shall, at its then next ensuing regular term, make its order, entered of record, reciting the result of such election, and declaring such road located and established, if, in its judgment, the public convenience and utility thereof shall justify it. (R. S. 1889, § 7861.)

SEC. 9487. **When no order for election shall be made.** But no order for an election shall be made, as provided in the preceding section, unless the road proposed to be built shall be at least five miles in length. (R. S. 1889, § 7862.)

SEC. 9507. **Board of township road commissioners, when elected—qualifications.** — At the next general election to be held in such townships on the first Tuesday after the first Monday in November, 1888, and every two years thereafter, there shall be elected in such townships as may organize under the provisions of this article, by the qualified voters of the township, three citizen tax-payers of such townships, who shall be qualified voters thereof, and who shall be known as the board of township road commissioners, and hold their office for the term of two years. Said commissioners shall be commissioned by the county court upon the proper returns showing their election, in the same manner as justices of the peace are commissioned under the laws of this state, such commissioners, upon their qualification, shall organize by choosing one of their number chairman, and also one of their number supervisor of roads in such town-

ship, who shall also be *ex officio* clerk of said board, and such clerk shall keep a full record of all proceedings of such board, and keep and preserve all books and papers pertaining to the duties imposed on such board. (R. S. 1889, § 7882, amended.)

SEC. 9510. **Special election may be held to determine amount of taxes to be levied, when.**—In making the levy of taxes for road purposes in such township, as provided in section 9509 of this article, where the amount, when added to all other taxes for county purposes in such county for that year, shall exceed the limit fixed by section eleven of article ten of the constitution of the state of Missouri, then it shall be lawful for the county court of the proper county, upon the petition of fifty tax-payers of such township, setting forth therein the amount of money deemed necessary in such township for road and bridge purposes, to be raised by taxation, and the year or years for which the same shall be assessed and collected, to cause to be submitted to a vote of the qualified voters of such township, at an election for that purpose to be held therein, ordered by the county court, the proposition whether such township shall levy and collect for road purposes the amount of taxes for the year or years named in such petition. The county court shall thereupon order an election to be held at such time as it may deem proper, and shall furnish to the voters at such election affirmative and negative ballots, "For the levy and collection of ——— dollars for road purposes," and "Against the levy and collection of ——— dollars for road purposes." Such election shall be held, conducted and returns made, opened and counted in the same manner as elections for county officers are now or may hereafter be required by law, except that there shall be but three judges and one clerk of such election. (R. S. 1889, § 7885.)

SEC. 9516. **Question submitted—form of ballot, returns, how proceeded with—organization to go into operation, when.**—The county court of any county other than those which have or may hereafter adopt township organization, on the petition of fifty legal voters and tax-payers of any township therein, shall cause to be submitted to the voters of such township the question of the adoption of this article for such township, by the ballot to be written or printed, "For organization for road purposes," or "Against organization for road purposes;" which election shall be held at a general or special election, to be ordered by the county court; and such election shall be held, canvassed and returned in like manner as elections held for county officers; and if it shall appear by the returns of such election that a majority of the legal voters of such township voting at such election are for such organization, then such township so voting in favor of

25822

such organization shall, from and after such election, be governed by the provisions of this article; and in like manner, on such petition and election, the voters of such township may at any time vote upon the question whether they shall longer remain under such organization, and if the like majority shall be against organization, then, after such election, the provisions of this article shall no longer apply to such township: *Provided, however,* that in such case, for all the purposes of faithfully carrying out any authorized contract or undertaking on the part of such township, the same shall be considered organized and in force. (R. S. 1889, § 7891.)

SEC. 9536. **Petition for election to determine construction of graded, etc., roads.**—The county court of any county in this state, on the receipt of a proper petition, shall order an election to be held in such county at the usual places of voting for state and county officers, to determine whether or not certificates, bonds or other forms of indebtedness of such county shall be issued by the county court of such county for the construction or improvement of graded, macadam, gravel or plank roads and highways of such county. The said petition to the county court for such purpose shall be signed by not less than ten per cent. of the tax-paying voters of each township in such county—the sufficiency of said petition to be verified by the poll-books of such county for the last preceding general election. (R. S. 1889, § 7909.)

SEC. 9537. **Election, how and when—expenses, how paid.** Such election shall be held and determined in accordance and in all respects with the laws of the state governing general elections, and the result thereof shall be entered upon the records of such county court, and the expenses of such election shall be paid out of the county treasury: *Provided,* that no such election shall take place on any election day, nor within ninety days of any general election held under the constitution and laws of this state. (R. S. 1889, § 7910.)

TO INCUR INDEBTEDNESS.

SEC. 9561. **Election to determine whether warrants shall be issued for road purposes, ordered, how.**—That the county court of any county in this state, on the receipt of a proper petition, shall order an election to be held in such county, at the usual place of voting for state and county officers, to determine whether or not warrants or other forms of indebtedness of such county shall be issued by the county court of such county, for constructing, improving and grading the public roads and highways of such county. The said petition to the county court for such purposes shall be signed by not

less than one hundred tax-paying voters of said county. The proof of such tax-payers shall be made by the oath or affidavit of the collector made to the county court on presentation of said petition. (Laws 1891, p. 197.)

SEC. 9562. **Conducted, how—expenses.**—Such election shall be held and determined in accordance and in all respects with the laws of the state governing general elections, and the result thereof shall be entered upon the records of such county court, and the expenses of such election shall be paid out of the county treasury. (Laws 1891, p. 197.)

SEC. 9563. **Duty of county court in ordering election.** That the county court, when ordering an election under the preceding section, shall state the kind of indebtedness upon which said vote is to be taken, and shall publish the same in connection with the notice of such election, for not less than sixty days next preceding such election, in one or more newspapers published in the county, or if there be no newspapers, then by not less than one hundred printed notices posted in as many conspicuous places equally distributed in such county. (Laws 1891, p. 197.)

SEC. 9564. **Duty of county court when proposition carries, etc.**—That when an election has been held under the provisions of this article, and it is found that two-thirds of the voters voting at such an election have voted in favor of such indebtedness, the county court of such county shall make an order of record, that hereafter whenever any person presents a proper claim against the county for labor, work or material used in and upon the public roads, and establishes the correctness of said claim, that said person be paid therefor in warrants or other form of indebtedness of such county as herein provided: *Provided*, that such indebtedness shall not exceed in any one year more than twenty cents on the one hundred dollars, or more than five per centum, including existing indebtedness, on the value of the taxable property of such county, to be ascertained by the assessment next before the last assessment for state and county purposes previous to contracting such annual indebtedness; *and provided further*, that at the time of contracting such indebtedness, the county court shall provide for the collecting of annual tax sufficient to pay the interest on said indebtedness as it falls due, and also to constitute a sinking fund for the annual payment of the principal of said annual indebtedness. (Laws 1891, p. 197.)

SEC. 9571. **Notice of result of election.**—That if, after the county court canvasses the returns of said election and finds that the same has received a majority as aforesaid, they shall order notice

25823

given in some newspaper for four weekly issues, and file a copy of said notice as published in said paper with the county clerk; and this article shall be in force from and after such filing. (Laws 1891, p. 197.)

## LOCAL OPTION LAW—WORKING ROADS BY CONTRACT SYSTEM.

SEC. 9600. **Election for adoption of article.**—This article shall be in force and take effect only in such counties as shall adopt the same by a majority of the qualified voters who shall vote for and against its adoption. Whenever one hundred qualified voters, who are resident tax-payers of any county in this state, shall file a petition with the county court of any county, asking the court to submit this article to a vote of the people of such county for their adoption, the county court of such county shall make an order of record that this article, describing the same by its title and the date of its approval, be submitted to the voters of such county at the next general election, or at a special election to be held for that purpose at such time as the court may order. The court shall give notice of such election and of such submission by publishing the same in some newspaper published in the county, such notice to be published for four consecutive weeks, the last insertion to be within ten days next before such election; and such other notice may be given as the court may think proper. The county court shall have the ballots for such election printed, and shall have printed on such ballots, "For the adoption of the road law." and "Against the adoption of the road law," with the direction, "Erase the clause you do not want." If the majority of the votes cast for and against the adoption of this article be for its adoption, the court shall declare the result of the vote thereon by an order of record, and shall make an order of record declaring this article to be the law in such county, the same to take effect and be in force from and after a day to be named in such order. No resident of any city or town whose citizens and property are not subject to taxation for road purposes under the provisions of this article shall vote on the adoption of this article. In case any county court orders a special election for the purpose of adopting this article, the court shall appoint three judges of election for each voting precinct in such county, one of whom shall be the clerk of the election; which judges shall subscribe and take the oath required of the judges of election under the general election law, and such judges shall make their returns of such election to the county court as judges of election are required to do in general elec-

tions. The county court shall pay such judges for such special election $1 a day for their services. In case any one appointed by the court as judge of such election shall fail to qualify and act as such, any five or more voters may elect a judge of election to fill such vacancy. (Laws 1893, p. 226.)

SEC. 9601. **Expenses of election paid, how.**—The expenses of the election herein provided shall be paid out of the general county revenue: *Provided*, this article shall not apply to any incorporated city, town or village in any county adopting the provisions of this article. (Laws 1893, p. 226.)

## TO CREATE SPECIAL ROAD DISTRICT.

SEC. 9631. **Election for adoption of article.**—This article shall be in force and take effect only in such prescribed territory as shall adopt the same by a majority of the qualified voters who shall vote for and against its adoption at such election. Whenever fifty qualified voters, who are resident tax-payers of any such proposed special road district, shall file a petition with the county court of any county, asking the court to submit this article to a vote of the people of such proposed road district for their adoption, the county court of such county shall make an order of record that this article, describing the same by its title and the date of its approval, be submitted to the voters of such proposed road district at the next general election, or at a special election to be held for that purpose at such time as the court may order. The court shall give notice of such election and of such submission by publishing the same in some newspaper published in the county—such notice to be published for two consecutive weeks, the last insertion to be within five days next before such election; and such other notice may be given as the court may think proper. The county court shall have the ballots for such election printed, and shall have printed on such ballots, "For the adoption of the road law," and "Against the adoption of the road law," with the direction, "Erase the clause you do not favor." If the majority of the votes cast for and against the adoption of this article be for its adoption, the court shall declare the result of the vote thereon by an order of record, and shall make an order of record declaring this article to be the law in such special road district, the same to take effect and be in force from and after a day to be named in such order, within ten days. In case any county court orders a special election for the purpose of adopting this article, the court shall appoint three judges of election for each voting precinct in such proposed special road district, one of whom shall be the clerk of the election; which judges shall subscribe and take the

25824

ath required of the judges of election under the general election law, nd such judges shall make their returns of such election to the county ourt as judges of election are required to do in general elections. The ounty court shall pay such judges for such special election one dollar nd twenty-five cents a day for their services. In case any one ap-ointed by the court as judge of such election shall fail to qualify and ct as such, any five or more voters may elect a judge of election to ill such vacancy. (Laws 1895, p 253.)

SEC. 9632. **Election expenses, how paid.**—The expenses of uch election shall be borne by the county within which is all or the reater part of the territory of the proposed district. (Laws 1895, p. 53.)

SEC. 9633. **Proposition may be resubmitted, when.**—If ny district shall have adopted the provisions of this article, the ques-ion may be resubmitted after the expiration of four years, upon the etition of fifty resident tax-payers of said district, at the ensuing eneral election, and if a majority of the votes of the district be cast gainst it, the operation of the law shall cease in said district. (Laws 895, p. 253.)

ONTRACT SYSTEM IN COUNTIES UNDER TOWNSHIP ORGAN-IZATION.

SEC. 10339. **Adoption of the contract system.**—Whenever he inhabitants of any township in this state, having heretofore dopted, or which may hereafter adopt township organization, may de-ire to adopt the contract system of working the roads in such town-hip, it may be accomplished in the following manner: Upon the re-eption of a petition setting forth the facts and signed by fifty resident ouseholders of such township residing outside of any incorporated ity, town or village, the township board of directors shall order an lection held therefor, not more than forty days after the receipt of aid petition, twenty days' notice of said election to be given by publi-ation in some paper published in said township, if there be one, and if not, by at least twelve written or printed hand-bills posted in twelve public places in said township, and the vote therefor shall be by ballot. Those voting therefor shall have written or printed on their ballots "For the contract system," and those voting against shall have writ-ten or printed on their ballots, "Against the contract system," and should a majority of the votes cast upon said proposition be for the contract system of working the roads, the township clerk shall declare by publication the adoption of said system in such township. The

votes at such election shall be cast up and forwarded to the township clerk who shall enter on the record of the township board all the proceedings respecting such election and the total vote, both for and against such system, and shall forward a transcript of such record to the county clerk of the county, who shall keep a copy of the same in a book kept for that purpose. All elections held under the provisions of this section shall be governed by the law controlling township elections. The provisions of this section shall apply only to counties under township organization. (New section.)

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## CONCERNING SCHOOLS.

CHAPTER 154—ARTICLE I.

SEC. 9740. **To organize unorganized territory.**—Whenever there shall be in this state any territory not organized into a school district, and containing within its limits twenty or more pupils of school age, three or more tax-payers of such territory may call a meeting of the qualified voters of such unorganized territory, or such part thereof as they desire to organize into a school district, by first giving fifteen days' notice of the time, place, purpose of the meeting and boundary lines of the territory proposed to be organized. The qualified voters, when assembled, may organize such territory into a school district, voting therefor, who shall approve of a plat defining the boundaries thereof, and elect three directors, who shall serve until the next annual meeting, when one director shall be elected to serve for one year, one director for two years and one director for three years—said directors to serve until their successors are duly elected and qualified: *Provided*, that any territory not organized into a school district, and containing less than twenty pupils of school age, may be attached to an adjoining district upon petition by the qualified voters of such unorganized territory, or such part thereof as may wish to be attached to such adjoining district, directed to the board of directors of such adjoining district; and it shall be the duty of such board, on receipt of the petition, to meet forthwith and consider same, and if a majority of the board are in favor thereof, such territory shall become a part of such district. (R. S. 1889 § 7970—z.)

SEC. 9742. **Formation of new districts.** — When it is deemed necessary to form a new district, to be composed of two or

(z) Money apportioned prior to division of district does not follow new district. 90 Mo. 395. Posting of notices, condition precedent to the validity of such division. 54 A. 31; 94 Mo. 612.

25825

more entire districts, or parts of two or more districts, or to divide one district to form two new districts from the territory therein, or to change the boundary lines of two or more districts, it shall be the duty of the district clerk of each district affected upon the reception of a petition desiring such change, and signed by ten qualified voters residing in any district affected thereby, to post a notice of such desired change in at least five public places in each district interested fifteen days prior to the time of the annual meeting; and the voters when assembled shall decide such question by a majority vote of those who vote upon such proposition. If the assent to such change be given by all the annual meetings of the various districts thus voting, or of the part of the district to be divided, each part voting separately, the district or districts shall be deemed formed or the boundary lines thus changed from that date; but if all the districts, or parts of districts affected do not vote in favor of such change, the matter may be referred to the county commissioner; and upon such appeal being filed with him, in writing, within five days after the annual meeting, he shall appoint four disinterested men, resident tax-payers of the county, who, together with himself, shall constitute a board of arbitration, whose duty it shall be to consider the necessity for such proposed change and render a decision thereon, which decision shall be final. When there is an equal division the county commissioner shall give the casting vote. The commissioner shall at the time of the appointment of these members of this board of arbitration notify them to meet him at some convenient place in the county within fifteen days after annual school meeting where the deliberations of the board shall take place and its decision be rendered. But in making such change, the decision in all cases shall conform to the propositions contained in the notices and voted upon at the annual meeting; and the county commissioner shall, on or before the last day of April, transmit the decision to the clerks of the various districts interested, or to the clerk of the district divided, and said clerk or clerks shall enter the same upon the records of his or their respective district or districts; and the said board of arbitration shall be allowed a fee of fifteen dollars, to be paid by the district or districts taking the appeal at the time said appeal is made: *Provided, however,* that no new district shall be created or boundary line changed by which any district shall be formed containing within its limits by actual count less than twenty pupils of school age, or by which any district shall be left containing within its limits by actual count less than twenty pupils of school age: *Provided, however,* the resident

voters upon any island in any of the navigable rivers of this state may organize into a school district without being subject to the restrictions in the preceding portion of this section. It is further provided, that in changing the boundary line between the two established districts, one district shall not encroach upon the other simply for the acquisition of territory. (R. S. 1889, § 7972, amended, Laws 1891, p. 206, amended, Laws 1895, p. 267, amended—a.)

SEC. 9749. **Annual meeting.**—The annual meeting of each school district shall be held on the first Tuesday in April of each year, at the district school-house, commencing at 2 o'clock p. m. If no school-house is located within the district, the place of meeting shall be designated by notices, posted in five public places within the district, fifteen days previous to such annual meeting, or by notice for same length of time in all the papers published in the district. (R. S. 1889, § 7978—b.)

SEC. 9752. **School loan — method of voting — sale of bonds.**—For the purpose of erecting school houses and furnishing the same in cities, towns and school districts, the board of directors shall be authorized to borrow money, and issue bonds for the payment thereof, in the manner herein provided. The question of loan shall be decided at an annual school meeting, or at a special election to be held for that purpose. Notice of said election shall be given at least fifteen days before the same shall be held, by at least five written or printed notices posted in five public places in the school district where said election shall be held, and the amount of the loan required, and for what purposes. It shall be the duty of the clerk to sign and post said notices. The qualified voters at said election shall vote by ballot. Those voting in favor of the loan shall have written or printed on their tickets, "For the loan;" those voting against the loan, the words "Against the loan;" and if two-thirds of the votes cast shall be "for the loan," the district board shall be vested with the power to borrow money in the name of the district, to the amount and for the purpose specified in the notices aforesaid, subject to the restrictions of the following section. When bonds are voted under this section for the erection of one or more school-houses, to be erected on the same or different sites, in districts whose board of directors con-

(a) Directors must decide whether petitioners are qualified voters. 84 Mo. 90. Commissioners cannot change boundary otherwise than as proposed in the election. 85 Mo. 156; 94 Mo. 612; 70 A. 238. No petition required to change boundary, when. 89 Mo. 23. Statute construed. 48 A. 560. New school districts may be formed, how. 75 A. 317.

(b) Chairman of meeting not subject to criminal law for rejecting vote of applicant for suffrage. 90 A. 210.

sists of three members, said bonds shall not be negotiated by said board until said bonds have been deposited with the county or township treasurer of the county or township in which said district shall be situated, and upon the order of said board, and the payment to the county or township treasurer of the amount agreed to be received for the same by said board from the persons loaning said money upon said bonds. The county or township treasurer shall countersign said bonds, and deliver the same to the person or persons named by said board of directors; but no such bonds shall be sold for such an amount that the net proceeds, after deducting expenses and commissions from the same, shall be less than ninety cents on the dollar of the face value thereof, and all renewal funding bonds issued by such districts, to be exchanged for outstanding bonds of said districts, or for the purpose of being sold to raise sufficient funds to pay any outstanding bonds thereof, shall not be exchanged, negotiated or sold by the board of directors of said districts, except as above provided, and not until the purchase price thereof, or the bonds to be exchanged therefor, shall be turned over to the county or township treasurer; and said treasurer shall write or print the words "paid by renewal bonds" across the face of said bonds so received in exchange, and sign the same before delivering the said renewal bonds to said board. The said county or township treasurer and his sureties shall be responsible, on his official bond, for all moneys, bonds or securities received by him under this section. (R. S. 1889, § 7981—c.)

Sec. 9759. **Directors, qualifications of, how, and by whom elected.**—The government and control of the district shall be vested in a board of directors composed of three members who shall be citizens of the United States, resident tax-payers and qualified voters of the district, and who shall have paid a state and county tax within one year next preceding his or their election. Said directors shall be chosen by the qualified voters of the district at the time and in the manner prescribed in section 9749, and shall hold their office for the term of three years, and until their successors are elected or appointed and qualified, except those elected at the first annual meeting held in the district under the provisions of this chapter, whose term of office shall be for one, two and three years respectively. A qualified voter within the meaning of this chapter shall be any person who, under the general laws of this state, would be allowed a vote in the county for state and county officers, and who shall have resided

(c) No petition of the voters of the district is necessary to authorize the school board to call meeting for the purpose of borrowing money. 114 Mo. 641.

in the district thirty days next preceding the annual or special meeting at which he offers to vote. (R. S. 1889, § 7988—d.)

SEC. 9777. **Increase of tax levy for maintaining schools.** Whenever it shall become necessary, in the judgment of the board of directors of any school district, or boards of trustees or boards of education of any city, town or village in this state, to increase the annual rate of taxation for school purposes, or when any five resident tax-payers of such district shall petition such board, in writing, that they desire an increase in the rate of taxation, such board shall determine the rate of taxation necessary to be levied in such district within the maximum rates prescribed by the constitution for such purposes, and shall submit to the voters of said city, town, village or other school district, who are tax-payers of such city, town, village or other school district, at an election to be by such board called and held for that purpose, at the usual place of holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board, due notice having been given as required by section 9779; and if a majority of the voters who are tax-payers voting at such election shall vote in favor of such increase, the result of such vote, and the rate of taxation so voted in such district shall be certified by the clerk or secretary of such board or district to the clerk of the county court of the proper county, who shall, on the receipt thereof, proceed to assess and carry out the amount so returned on the tax-book on all the taxable property, real and personal, of such city, town or village, or other school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants provided by law. (R. S. 1889, § 8005—e.)

SEC. 9778. *Id.* **For erecting school-house.**—Such board of education or school boards of any city, town or village, or board of directors of any school district in this state, shall, whenever it shall become necessary, in their judgment, or be requested by a petition of ten tax-payers of any school district, city, town or village, to increase the annual rate of taxation for the purpose of erecting school buildings in such district, determine the rate of taxation necessary to be levied within the maximum rates prescribed by the constitution, and as therein limited for such purposes, and shall submit to the voters of districts formed of cities, towns and villages, or other school district,

(d) Officers of corporation in possession of their offices are presumed to be regularly elected and entitled to hold until contrary be shown. 44 Mo. 154. A person derives his title to an office by his election. 44 Mo. 223. Official character of school directors, how proven. 27 Mo. 251.

(e) What proceedings necessary to increase tax levy for school purposes. 125 Mo. 618; see 62 Mo. 444.

25827

at an election to be by such board called and held for that purpose, at the usual place for holding elections for members of such board, whether the rate of taxation shall be increased as proposed by said board for erecting school buildings, due notice having been given as required by section 9779, and if two-thirds of the qualified voters of such school district, or of such city, town or village forming a school district, voting at such election, shall vote in favor of such increase for the purpose aforesaid, the result of such vote and the rate of taxation so voted shall be certified by the secretary or clerk of such board to the clerk of the county court of the proper county, who shall on the receipt thereof, proceed to assess the amount so returned for building purposes on all the taxable property, both real and personal, of such city, town or village forming such school district or other school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants as is provided by law. (R. S. 1889, § 8006—f.)

SEC. 9779. **Notice of election for increase of tax.**—The elections authorized in sections 9777 and 9778 may be held at an annual meeting, or at a special meeting called and held for that purpose. Said board of directors or boards of education calling such election shall cause at least fifteen days' public notice to be given of the time and place of holding such election or elections, and the purposes for which it is held, by publication in some newspaper published in such city, town or village forming such school district or other school district; and if no newspaper is published in such school district, then by five written or printed hand-bills, posted in five of the most public places in such district. (R. S. 1889, § 8007.)

SEC. 9803. **County commissioner—eligibility—time of election and term of office.**—There is hereby created the office of county commissioner of public schools, the incumbent of which office shall be at least twenty-one years of age, a resident of the county when elected for at least one year prior to such election, and shall hold a first-grade county certificate, normal or state certificate, entitling him to teach in the public schools of such county. There shall be one county school commissioner for each county in the state, who shall be elected by the qualified voters of the counties, at the annual district school meetings held in said county on the first Tuesday in April, 1891, and every two years thereafter. And in school districts composed of parts of districts lying in two or more counties, the qualified voters residing in any fractional part of such district, having no

(f) No authority exists to borrow money and issue bonds to purchase school-house site. 114 Mo. 641.

school-house located in the county where such fractional part of such district is situated, may after the transaction of the business of the annual school meeting, retire to some convenient place selected by the county commissioner in the school district lying within the county of which they are residents, and shall organize their meeting and cast their votes for county commissioner of public schools, as is provided for annual school meetings, in section 9750 of this chapter, and the officers elected at such meeting shall perform the same duties as similar officers at the annual school meeting provided for in said section: *Provided,* that in cities, town and village districts the voters in the county other than where the school-house is situated may organize at the same time as the meeting is organized at the school-house for the purpose for voting for school commissioner, and no other. All returns of elections held under this section shall be made to the clerk of the county court of each county, whose duty it shall be to cast up said returns, and give to the person having the greater number of votes, a certificate of election, for which he shall receive fifty cents, to be paid by the party receiving the certificate, and the county clerk shall certify said election to the state superintendent. Contested elections under this section to be decided by the county court. Said commissioner of public schools shall hold his office for two years, and until his successor is elected and qualified; and all vacancies caused by death, resignation, refusal to serve, or removal from the county, shall be filled by the governor, by appointment, for the unexpired term; the county commissioner shall turn over all books, papers, certificates, stub-books and records in his possession to his successor. (R. S. 1889, § 8028, amended, Laws 1895, p. 262, amended—g.)

SEC. 9804. *Id.* **Determining election of — commission.** The vote for county commissioner shall be cast up and the result announced to the meeting and entered upon the record of the proceedings. A certificate containing the names of the persons voted for, and the number of votes cast for each, shall be delivered by the district clerk within five days thereafter to the county clerk, the said certificate to be signed by the chairman and secretary of the meeting; and the county clerk shall, within ten days after the annual school meeting, cast up the same and issue a commission, attested by the seal of his court, to the person receiving the highest number of votes at such election. And such commission, while in force, shall entitle said commissioner to all the rights and privileges accruing to any teacher of

(g) One must, when elected, have a teacher's certificate in order to qualify him to hold the office of county commissioner. 129 Mo. 431.

25828

the county by virtue of his holding a certificate granted by said commissioner in accordance with section 9805. (R. S. 1889, § 8029—h.)

SEC. 9810. **County supervision, how adopted.**—Whenever the inhabitants of any county in this state may desire to establish county school supervision in and for said county, and elect a county school superintendent therefor, the same may be accomplished in the following manner: Upon the reception of a petition setting forth said facts and signed by one hundred resident freeholders, the county court shall order an election held therefor at the next annual school meeting, thirty days' notice to be given of said election, by publication in at least two county papers, if there be that number published in said county, within the county; and the vote therefor shall be by ballot; those voting therefor shall have written or printed on their ballots "For supervision," and those voting against shall have written or printed on their ballots "Against supervision" and should a majority of the votes cast upon said proposition be for supervision, the county clerk shall declare by publication the adoption of county supervision in and for said county. The vote shall be cast up at the annual meeting, forwarded to the county clerk, and by him counted and announced in the same manner as the vote for county school commissioner; all elections held for county superintendent shall be governed by the law controlling the election and qualification of the county commissioner, and all vacancies shall be for like cause and filled in like manner; should county supervision be adopted at the annual meeting near the middle of the term of the county commissioner, the commissioner then in office shall comply with the requirements of the next section, and serve as county superintendent for the ensuing year and until his successor is elected and qualified. (R. S. 1889, § 8035.)

SEC. 9854. **State superintendent—election and term of office.** — There shall be elected by the qualified voters of this state, at the next general election for state and county officers, and every four years thereafter, a state superintendent of public schools, who shall enter upon the discharge of his duties on the second Monday of January next following his election, and hold his office for the term of four years and until his successor is elected and qualified. The election of said superintendent and the returns thereof shall be the same in all respects as provided for the election of other state officers; and in case of vacancy occurring in said office, by death, resignation or otherwise, the governor shall fill the same by appointment, who shall hold his office until the next general election. (R. S. 1889, § 8077.)

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(h) 129 Mo. 431.

## ARTICLE II.

SEC. 9861. **To organize and elect six directors.**—Whenever it may be desired to organize a common school district into a city, town or village school district, with special privileges granted under this article, the board of directors shall, upon the reception of a petition to that effect and signed by ten qualified voters who are resident tax-payers of the district, order an election held for that purpose, and shall give notice of such election by notices posted in five public places within the district for fifteen days prior to the day of such election—said meeting to be held at 2 o'clock p. m. at the public schoolhouse in said district, if there be one, but if there be no public schoolhouse, then at such place within the district as may be designated in the notices; and when said meeting is assembled, it shall elect a chairman and secretary, who shall keep a correct record of the proceedings of said meeting, and turn the same over to the board, properly signed and attested by the chairman, and the board shall have a copy of the same entered upon the district records; said election may be held at an annual or at a special meeting, and the order of business under this section shall be as follows:

*First*—To organize as a city, town or village school district; those voting for the organization shall have written or printed on their ballots "For organization," and those voting against the organization shall have written or printed on their ballots "Against organization;" and each person desiring to vote shall advance to the front of the chairman and deposit his ballot in a box to be used for that purpose. When all present shall have voted the chairman shall appoint two tellers, who shall call each ballot aloud, and the secretary shall keep a tally and report to the chairman, who shall announce the result; and if a majority of the votes cast are for "organization," the chairman shall call the next order of business.

*Second*—To elect six directors, as follows: two shall be elected for three years, two for two years and two for one year, and each director shall be elected separately, and the result announced in the manner prescribed for organization. If said election is held at a special meeting, from then until the next annual meeting shall be taken as one year, so far as relates to the terms of the directors elected. The directors chosen must comply with the requirements of section 9864. (R. S. 1889, § 8084—i.)

(l) 75 A. at 327.

25829

SEC. 9862. **Government of district—tenure of directors—vacancies, how filled.**—The government and control of such city, town or village district shall be vested in a board of six directors, who shall hold their office for three years and until their successors are duly elected and qualified, and any vacancy occurring in said board shall be filled in the same manner and with like effect as vacancies occurring in boards of other school districts are required to be filled, and the person appointed shall hold office till the next annual meeting, when a director shall be elected for the unexpired term. (R. S. 1889, § 8085.)

SEC. 9863. **Election of directors.**—The qualified voters of the district shall, annually, on the first Tuesday of April, elect two directors, who are citizens of the United States, resident tax-payers and qualified voters of the district, and who shall have paid a state and county tax within one year next preceding their election or appointment, who shall hold their office for three years and until their sucessors are duly elected and qualified; and all vacancies in the board shall be filled for the unexpired term. (R. S. 1889, § 8086—j.)

SEC. 9874. **Regulations governing elections at annual meetings.**—The qualified voters of such city, town or village school district shall vote by ballot upon all questions provided by law for submission at the annual school meetings, and such election shall be held on the first Tuesday in April of each year, and at such convenient place within the district as the board may designate, beginning at 7 o'clock a. m. and closing at 6 o'clock p. m. of said day. The board shall elect three judges of election, and said judges shall appoint two clerks; said judges and clerks shall be sworn and the election otherwise conducted in the same manner as the elections for state and county officers, and the result thereof certified by the judges and clerks to the secretary of the board of directors, who shall record the same, and by order of said board shall issue certificates of election to the persons entitled thereto; and the results of all other propositions submitted must be reported to the secretary of the board, and by him duly entered upon the district records. All propositions submitted at said annual meeting may be voted for upon one and the same ballot, and the necessary poll-books shall be made out and furnished by the secretary of the board: *Provided*, that in all cities and towns having a population exceeding two thousand and not exceeding one hundred thousand, said elections shall be held at the same time and places as the election for municipal officers, and the judges and clerks of such

(j) A woman is not eligible as school director, under this section. 137 Mo. 625, 636.

municipal election shall act as judges and clerks of said school election, but the ballots for said school election shall be upon separate pieces of paper and deposited in a separate ballot-box kept for that purpose, but no greater number of names for directors shall be upon any ballot than are to be voted for at such election. Should such school district embrace territory not included in the limits of such city or town, the qualified voters thereof may vote at such voting precinct as they would be attached to provided the ward lines thereof were extended and produced through such adjoining territory. (R. S. 1889, § 8096—k.)

SEC. 9875. **Change of boundary lines.** — Whenever an entire school district or a part of a district adjoining any city, town or village school district, desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting for said purpose, by posting notices in five public places within the district for fifteen days prior to the day of such meeting; said meeting shall be held at 2 o'clock p. m. on the day specified in the notices, and when assembled, the meeting shall be organized by the election of a chairman and a secretary, who shall keep a correct record of the transactions of said meeting, and should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of such city, town or village school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action. In case an entire district is thus annexed, all property and money on hand thereto belonging shall immediately pass into the possession of the board of said city, town or village district; but should any part of a district be annexed thereto, said part shall relinquish all claim and title to any part of the school property and money on hand belonging to said original district, and that portion of the district remaining must contain within its limits thirty children and thirty thousand dollars assessed valuation, or thirty children and nine square miles of territory. The voting at said special school meeting shall be by ballot, as provided for in section 9861, and the ballots shall be "for annexa-

(k) 48 A. 560.

25830

tion" and "against annexation" when the whole district is to be annexed, but if only a part is to be annexed, the ballots shall read "for release" and "against release." (R. S. 1889, § 8097—1.)

SEC. 9876. **Annexation to school district when corporate limits are extended.**—Whenever, by reason of the limits of any city, town or village being extended, a portion of the territory of any school district adjacent thereto has been incorporated in the city, town or village school district, the inhabitants of such remaining parts of districts shall have the right to be annexed to such city, town or village school district: *Provided*, that when such part of a school district desires to be so annexed, an election shall be held at a special meeting as provided in section 9875, and should a majority of the votes cast favor annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city, town or village school district; whereupon the board of such city, town or village district shall meet and confirm such annexation by a proper resolution of record; *and provided*, that when such part of a school district has no organization, any ten qualified voters may call a meeting of the district and proceed as provided in the foregoing section; and the secretary of such meeting shall certify if the majority vote for annexation, to the board of directors of the city, town or village school district, and the same action shall be taken as provided above. The remaining portion of such district shall be entitled to be attached to said city, town or village school district: *Provided*, that the school population of said adjoining district has been reduced to a smaller number than that required by law, or the territory has been reduced to less than nine square miles; and whenever such adjoining fractional district shall desire to be so annexed, a petition or memorial shall be presented to the city, town or village school district, informing the board of directors of the same of their desire to be annexed, and giving the boundary of the fractional district desired to be annexed, the number of inhabitants in the same, and the number of children of school age; whereupon the board of directors of such city, town or village school district shall take such action for the incorporation of such adjoining territory as is required to be taken when territory has been annexed, as provided in section 9875: *Provided, however*, that where a portion of one or more school districts adjacent to such city, town or village school district, and adjacent to each other, have been, by reason of the extension of the limits of such city, deprived

(1) Board of special school district, power to extend limits. 65 Mo. 50. Meeting to vote upon proposition to annex territory must be called by board of directors. 54 A. 202. How right of annexation may be exercised. 68 A. 397.

of the necessary school population or territory to enable them to maintain their school district organization, they shall have a right to elect, first, to become a part of said city, town or school district; or, second, to continue as a separate school district; or, third, to join two or more of the adjoining school districts; and for the purpose of such election, the qualified voters of such districts shall call a special meeting and proceed to vote on such propositions, as provided in section 9875; *and provided*, if the said fractional part of a district has no board of directors remaining, any ten qualified voters of said fraction of a district may call such special meeting, and if a majority of the qualified voters present and voting at said meeting vote favorable to either of said propositions, a certified copy of the proceedings of such meeting shall be delivered to the board of directors of the school district to which they vote to be attached, and such board of directors shall take such steps as necessary and lawful to perfect the annexation as decided by said election. (Laws 1895, p. 259.)

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## APPLICABLE TO CITIES OF 50,000 AND LESS THAN 300,000 INHABITANTS.

### ARTICLE III.

SEC. 9882. **Election of directors.** — The qualified voters of the school district shall, on the first Tuesday after the first Monday in April in the year 1896, elect two directors who are resident taxpayers and qualified voters of the school district, who shall hold their office for six years and until their successors are duly elected and qualified; and on the same Tuesday in April every two years thereafter shall elect two directors, who shall hold their office for six years and until their successors are elected and qualified: *Provided*, that in any such districts affected by this article as hereby amended, and which were not included in its provisions prior to the taking affect of said amendment, there shall be elected on the first Tuesday after the first Monday in April, 1895, six directors, who shall qualify on or before the first day of October, 1895, two of whom shall serve from said first day of October, 1895, until the first Tuesday after the first Monday in April, 1896, and until their successors are duly elected and qualified; two of whom shall serve until the same Tuesday in April, 1898, and until their successors are duly elected and qualified; two of whom shall serve until the same Tuesday in April, 1900, and until their successors are duly elected and qualified—the length of their respective terms to be determined by lot; and, that any such school

25831

district may not be without a legally constituted board of directors, the directors in office at the time of the adoption of this article shall continue in office as the legal board of directors of such school district until the board of directors provided for in this article shall have been duly elected and qualified. (Laws 1893, p. 238, amended, Laws 1895, p. 270.)

SEC. 9883. **Officers of the board.**—Within ten days after the biennial election, the board shall meet, the duly elected members be qualified and the board organize by the election of a president, vice-president, secretary and treasurer; the secretary and treasurer may be or may not be members of the board. (Laws 1893, p. 238.)

SEC. 9892. **Regulations governing elections at biennial meetings.**—The qualified voters of such city school district shall vote by ballot for directors and upon all questions provided by law for submission at the biennial school meetings, and the election of directors and the submission of such questions, except as provided in sections 9893, 9895 and 9896 of this article, shall be held at the same time and places as the election for municipal officers, and the judges and clerks of such municipal elections shall act as judges and clerks for such elections for school directors and the submission of such questions, but the ballots for directors and upon such questions shall be on separate pieces of paper and deposited in a separate ballot-box kept for that purpose; but no greater number of names for directors shall be upon any ballot than are to be voted for at such election; and in case any school district embraces territory adjoining such city not included in the city limits, the voters for school directors or upon such questions living within such adjoining territory may vote at such voting precinct as they would be attached to if the precinct lines of such city were extended and produced through such adjoining territory. The officer in said city whose duty it shall be to furnish such judges and clerks poll-books and ballot-boxes for the purpose of such municipal elections shall provide, at the expense of the school district, an additional set of poll-books, to be used by the judges and clerks for the purposes of the election of directors or the submission of such questions; and the county clerk shall, at the expense of the school district, provide poll-books for the use of the judges and clerks at each voting precinct at which qualified voters of the school district residing in the territory adjoining such city would be entitled to vote for such directors or upon such questions. The ballots to be used at such elections for directors and at the submission of such questions, shall be provided, at the expense of the school district, by the officer

in said city whose duty it may be to provide the ballots to be used at the municipal elections, and in like manner delivered to the judges and clerks of election. The result of such election or submission of any such question shall be certified by the judges and clerks to the secretary of the board of directors, who shall lay the same before the board and record the same, and under the directions of the board shall issue certificates of election to the parties entitled thereto. (Laws 1893, p. 238, amended.)

SEC. 9893. **School loan, method of voting.**—For the purpose of erecting school-houses or a public library building containing offices of the board in such city school districts, the board of directors shall be authorized to borrow money and issue bonds for the payment thereof in the manner herein provided. The question of loan shall be decided at the biennial election for school directors or at a special election ordered by the board of directors of such district, and held at such time and places as the board of directors shall designate. Notice of said election, the amount of the loan required, and for what purpose, shall be given at least twenty days before the same shall be held, by publication in at least three daily newspapers printed and published in the district where such election shall be held, if there be three daily papers published therein; if not, then such notice shall be published in at least two newspapers, which shall be printed and published in such district not less than six days in each week. It shall be the duty of the president and the secretary to sign said notices. The qualified voters at said election shall vote by ballot; those voting in favor of the loan shall have written or printed on their tickets, "For the loan;" those voting against the loan, the words "Against the loan;" and if two-thirds of the votes cast shall be "for the loan," the district board shall be vested with the power to borrow money in the name of the district, to the amount and for the purpose specified in the notices aforesaid, subject to the restrictions of the following sections. (Laws 1893, p. 238, amended.)

SEC. 9895. **Special levy for sites and buildings.**—The board of directors for such city school district in this state, whenever it becomes necessary, in their judgment, to increase the annual rate of taxation for the purpose of purchasing sites, and erecting school buildings or a public library building containing offices of the board, shall determine the rate of taxation necessary to be levied, within the maximum rates prescribed by the constitution, and as therein limited for such purposes, and shall submit to the voters of such city school district, at the biennial election for school directors, or at a special

election ordered by the board of directors of such school district and held at such time and places as shall be designated by the board of directors, whether the rate of taxation shall be increased as proposed by said board, for the purchase of sites and erection of such buildings; and if two-thirds of the qualified voters of such school district voting at such election shall vote in favor of such increase for the purpose aforesaid, the result of such vote and the rate of taxation so voted shall be certified by the secretary of such board to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess the amount so returned, for the purposes aforesaid, on all the taxable property, both real and personal, of such city school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants, as provided by law. Notice of said election shall be given at least twenty days before the same shall be held, by publication in at least three daily newspapers printed and published in the district where such election shall be held, if there be three daily newspapers published therein; if not, then such notice shall be published in at least two newspapers which shall be printed and published in such district not less than six days in each week. (Laws 1893, p. 238, amended.)

SEC. 9896. **Increase of tax levy for maintaining schools.** Whenever it shall become necessary, in the judgment of the board of directors of any such city school district, to increase the annual rate of taxation for school purposes, such board shall determine the rate of taxation necessary to be levied in such district, within the maximum rates prescribed by the constitution for such purposes, and shall submit to the voters of such city school district who are tax-payers of such school district, at the biennial election for school directors, or at a special election ordered by the board of directors of such school district, the question whether the annual rate of taxation for school purposes shall be increased as proposed by said board. Notice of such election shall be given at least twenty days before the same shall be held, by publication in at least three daily newspapers printed and published in the district where such election shall be held, if there be three daily newspapers published therein, or if not, then such notice shall be published in at least two newspapers, which shall be printed and published not less than six days in each week. The voters who are tax-payers voting at such election shall vote by ballot; those voting in favor of such increase of the annual rate of taxation shall have written or printed on their tickets, "For increase of annual rate of taxation for school purposes;" those voting against such increase, the words "Against increase of annual rate of taxation for school

purposes." And if a majority of the voters who are tax-payers voting at such election shall vote in favor of such increase, the result of such vote and the rate of taxation so voted for in such district shall be certified by the secretary of such board to the clerk of the county court of the proper county, who shall, on receipt thereof, proceed to assess and carry out the amount so returned on the tax-books on all the taxable property, real and personal, of such city school district, as shown by the last annual assessment for state and county purposes, including all statements of merchants provided by law. (New section.)

SEC. 9897. **Method of conducting special elections.**—The board of directors shall, by resolution, fix the time and designate the places at which any special election under the provisions of section 9893, section 9895 or section 9896 of this article shall be held. Not less than one polling place for each 1,000 votes or fraction of 300 votes cast at the previous general election for county officers shall be designated for each city ward in the district. The election shall begin at six o'clock a. m. and close at seven o'clock p. m. The board of directors shall appoint three judges of election for each polling place, except in cities having board of election commissioners, which election commissioners shall appoint the judges, and the judges at each polling place shall appoint two clerks. The judges and clerks shall be sworn, and the election, except as in this section otherwise provided, shall be conducted in the same manner as elections under article 1, chapter 102 of the Revised Statutes of 1899. All propositions submitted at any such special election may be voted upon on one and the same ballot, and the ballots, necessary poll-books and one ballot-box for each voting place shall be furnished by the board of directors. Immediately after the close of the election the ballots shall be counted, and after being counted shall be sealed up in a package and delivered to the secretary of the board of directors, who shall deposit them in his office, where they shall be safely preserved for twelve months, and said secretary shall not allow the same to be inspected unless in case of a contested election or the same become necessary to be used in evidence, and then only on the order of the proper court or the judge thereof in vacation, under such restrictions for their safe keeping or return as the court or judge making the order may deem necessary; and at the end of twelve months such secretary shall publicly destroy the same by burning. The result of the election shall be certified by the judges and clerks to the secretary of the board of directors, who shall report the same to the board, which shall order

25833

the same duly entered on the records in which are preserved the minutes of the proceedings of the board. With the certificates as to such result, the judges shall also deliver to the secretary of the board of directors the poll-books, the ballot-boxes and the copies of the list of voters, if any, used at such special election. The powers vested in or the duties imposed upon boards of election commissioners by virtue of article 9, chapter 102, and the acts amendatory thereof, shall not be exercised or performed by them in respect of any special election held under the provisions of this amendatory act, in cities now having or which may hereafter have a population of more than one hundred thousand and less than three hundred thousand inhabitants, except as hereinbefore provided: *Provided, however,* that such board of election commissioners shall, on the request of, and at the expense of the school district, before any such special election shall be held, make and deliver to its board of directors one or more lists of the names and residences of the qualified voters in each ward, certified by the secretary o the said board of election commissioners, which lists the board of directors shall cause to be delivered to the judges of election of the proper polling places for their use in enabling them to determine the qualifications of persons offering to vote. (New section.)

Sec. 9898. **Change of boundary lines.** — Whenever an entire school district or a part of a district adjoining any city school district desires to be attached thereto for school purposes, upon the reception of a petition setting forth such fact, and signed by ten qualified voters of such district, the board of directors thereof shall order a special meeting for said purpose, by posting notices in five public places within the district for fifteen days prior to the day of such meeting; said meeting shall be held at two o'clock p. m. on the day specified in the notices, and when assembled, the meeting shall be organized by the election of a chairman and a secretary, who shall keep a correct record of the transactions of said meeting, and should a majority of the votes cast favor such annexation, the secretary shall certify the fact, with a copy of the record, to the board of said district and to the board of said city school district; whereupon the board of said city district shall meet to consider the advisability of receiving such territory, and should a majority of all the members of said board favor such annexation, the boundary lines of said city school district shall from that date be changed so as to include said territory, and said board shall immediately notify the clerk of said district which has been annexed, in whole or in part, of its action. In case an entire district is thus annexed, all property and money on hand thereto be-

longing shall immediately pass into the possession of the board of said city district; but should only a part of the district be annexed thereto, said part shall relinquish all claim and title to any part of the school property and money on hand belonging to said original district, and that portion of the district remaining must contain within its limits thirty children and thirty thousand dollars assessed valuation, or thirty children and nine square miles of territory. The voting at said special school meeting shall be by ballot, as provided for in section 9861, and the ballots shall be "for annexation," and "against annexation," when the whole district is to be annexed; but if only a part is to be annexed the ballot shall read "for release," and "against release." (Laws 1893, p. 238.)

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## APPLICABLE IN CITIES OF 300,000 INHABITANTS OR OVER.

### ARTICLE IV.

SEC. 9919. **Cities with 300,000 inhabitants or over to constitute district—corporate powers—to elect board of education—powers of board, etc.**—Every city in this state now having or which may hereafter have three hundred thousand inhabitants or over, together with the territory now within its limits, or which may in the future be included by any change thereof, shall be and constitute a single school district, shall be a body corporate, and the supervision and government of public schools and public school property therein shall be vested in a board of twelve members, to be called and known as the "board of education of ———" (in which title the name of such city shall be inserted) and in a superintendent of instruction and a commissioner of school buildings. * * * (Laws 1897, p. 221.)

SEC. 9923. **Special election to be held.** — Within sixty days after the taking effect of this article, or the same becomes applicable to such city, there shall be held in every such city a special election at which twelve members of such board of education shall be elected, who shall, by lot, divide themselves into three classes of four members each. The first class shall hold office until the next ensuing municipal election in such city, whether for general offices or members of the house of delegates; the second class until the second such ensuing election; the third class until the third such ensuing election, and until their successors shall have been elected and qualified. Such special election to be held within sixty days after this article takes effect

shall be held on such day as shall be named by the election commissioners of such city, who shall, in due time, name such day and perform all duties imposed on them by any law pertaining to elections in any such city for municipal officers or members of the house of delegates. Such special election and all the elections for members of such board of education shall be subject to and governed by the same laws, rules and regulations which govern elections in such city for municipal officers or members of the house of delegates, including the law pertaining to the registration of voters. After such special election there shall be elected at each municipal election, whether for general municipal officers or for members of the house of delegates, four members of such board of education, who shall assume the duties of their office at the first regular meeting of such board of education after their election, and who shall hold office for six years, and until their successors shall have been elected and qualified. (Laws 1897, p. 220—m.)

SEC. 9940. **Election for increase of taxation—powers of board—enumeration to be made.**—Any election which may be called by the board of education of such city to increase the rate of taxation for school purposes, or for any other purpose authorized by article 1, chapter 154 of the Revised Statutes of 1899, shall be held at such time as the board may direct, under the general election laws governing such city. The board of education shall have the powers of a school district in annual meeting, and shall perform such duties as are required by general laws of school districts, so far as such are applicable to the public school affairs of such city, and consistent with the provisions of this article. It shall at least once in every five years cause an enumeration to be made of all persons over six and under twenty years of age, resident within the city, designating male and female, white and colored, and age of each, together with the residence of said persons by street and number. In the years intervening between the taking of such enumeration said board may by resolution adopt the last enumeration therein made as its enumeration for the current year. A copy of the aggregate of such enumeration, or such resolution (as the case may be), duly certified by the president and secretary of said board under its corporate seal, shall be forwarded to the state superintendent of public schools and to the state auditor on or before the first day of July in each year. (Laws 1897, p. 220, amended.)

(m) 141 Mo. 45.

## ANNEXATION OF TERRITORY ADJACENT TO CITY DISTRICT WITH A POPULATION OF LESS THAN 100,000 INHABITANTS.

ARTICLE V.

SEC. 9952. **Districts may be annexed in certain cases.** Whenever a city school district now having or which may hereafter attain a population of more than one hundred thousand and less than three hundred thousand inhabitants, shall adjoin a city school district having a population of less than one hundred thousand inhabitants, and the school district containing the larger population shall desire to extend its boundary lines so as to embrace the territory of the district having the lesser population, together with the territory which may be attached thereto for school purposes, such extension may be accomplished in the manner hereinafter in this article prescribed. (New section.)

SEC. 9953. **Duties of the boards of directors.**—The board of directors of the district having the greater population shall adopt a resolution expressive of the desire of their said district to extend its limits so as to embrace the territory of the district having the lesser population, together with the territory which may be attached thereto for school purposes, and requesting the board of directors of such smaller district to order a special election in said district for the purpose of submitting to the qualified voters thereof, a proposition for such extension, and shall cause to be delivered to the president of the board of directors of such smaller district, a copy of such resolution, certified by the secretary of the board. (New section.)

SEC. 9954. **Election to be held—to be conducted, how.** Within thirty days after the delivery of a copy of said resolution to such president, the board of directors of such smaller district shall, by resolution, order a special election to be held in such district, at which shall be submitted to the qualified voters of the district, the question whether said district, with the territory attached thereto for school purposes, shall be annexed to and become a part of the district having the greater population. The board of directors shall by such resolution fix the time and designate the places at which such special election shall be held, and the number of the places so designated shall not be less than one in each city ward in the district. Printed notices, signed by the president and secretary of the board, stating the pur-

25835

pose of the election, and the time and places at which it will be held, shall be posted in at least ten public places in the district at least twenty days before the day of election. The election shall begin at seven o'clock a. m., and close at six o'clock p. m. The board of directors shall appoint three judges of election for each polling place and the judges at each polling place shall appoint two clerks. The judges and clerks shall be sworn, and the election, except as herein otherwise provided, shall be conducted in the same manner as elections under article 1, chapter 102, of the Revised Statutes of 1899. Should such school district embrace territory not included in the limits of a city, the qualified voters thereof may vote at such voting precinct as they would be attached to: *Provided,* the lines thereof were extended and produced through such adjoining territory. The voting shall be by ballot. Those voting in favor of such annexation shall have writetn or printed on the ballots "for annexation;" and those voting against such annexation the words "against annexation." The ballots, necessary poll-books and one ballot-box for each voting place shall be furnished by the board of directors. Immediately after the close of the election the ballots shall be counted, and the ballots, after being counted, shall be sealed up in a package and delivered to the secertary of the board of directors, who shall deposit them in his office, where they shall be safely preserved for twelve months, and said secretary shall not allow the same to be inspected unless in case of a contested election or the same become necessary to be used in evidence, and then only on the order of the proper court or the judge thereof in vacation, under such restrictions for their safe-keeping or return as the court or judge making the order may deem necessary; and at the end of twelve months such secretary shall publicly destroy the same by burning. The result of the election shall be certified by the judges and clerks to the secretary of the board of directors, who shall report the same to the board, which shall order the same duly entered on the records in which are preserved the minutes of the proceedings of the board. With the certificates as to such results, the judges shall also deliver to the secretary of the board of directors, the poll-books and the ballot-boxes used at such special election. (New section.)

## TO ADOPT TOWNSHIP ORGANIZATION.

CHAPTER 168—ARTICLE I.

SEC. 10225. **Voters may vote for or against township organization.**—At any general election that may be holden in the several counties of this state, the qualified voters in any county may vote for or against township organization, as provided by this article. (R. S. 1889, § 8424—n.)

SEC. 10226. **Question submitted—form of ballot.**—The county court, on petition of one hundred legal voters of said county, shall cause to be submitted to the voters of the county the question of township organization under this article, by the ballot, to be written or printed, "for township organization," or "against township organization," to be canvassed and returned in like manner as votes for state and county officers. (R. S. 1889, § 8425—o.)

SEC. 10227. **Returns, how proceeded with.**—The clerk of the county court shall cause an abstract of the returns of said election to be made out and certified as in election for state and county officers, record the same at length upon the records of the county court of the county, and shall certify the same to the secretary of state. (R. S. 1889, § 8426—p.)

SEC. 10229. **Township elections, when to be held.**—The clerk of the county court shall thereupon make out notices for each township, designating the time and place for holding the first township election in such township, which shall be holden on the last Tuesday in March next thereafter, and shall deliver such notices to the sheriff of the county, who shall cause the same to be posted up in not less than three of the most public places in the township, and not less than fifteen days before the last Tuesday in March; and the township clerk shall post up notices of all subsequent elections, as directed by the township board of directors. (R. S. 1889, § 8428—q.)

(n) Election, ballots. 74 Mo. 258. Courts may take judicial notice of the law, but not of its adoption. 72 A. 431.

(o) 74 Mo. 258; 57 A. 650.

(p) 57 A. 650.

(q) 138 Mo. 187.

25836

## METHOD OF CONDUCTING ELECTIONS.

ARTICLE IV.

SEC. 10241. **Elections, when and where held.** — The citizens of the several townships in all counties having adopted the township organization law of this state, who are qualified by the constitution and laws of this state to vote at general elections, shall assemble biennially on the last Tuesday in March at their usual place of voting, or at such place in their respective townships as they may have previously agreed upon, for the purpose of electing township officers and such other officers and transacting such other business as may be necessary. (R. S. 1889, § 8440—r.)

SEC. 10242. **Officers to be chosen.**—There shall be chosen at the biennial election in each township one trustee, who shall be *ex officio* treasurer of the township, one township collector, and one township clerk, who shall be *ex officio* township assessor, one constable, two members of the board, and two justices of the peace: *Provided,* the same persons may be elected members of the board and justices of the peace, at the same election, and hold both offices, also the same person may be elected constable and collector at the same election and hold both offices at the same time, by taking the proper oath of each office and giving the bond required by law. (R. S. 1889, § 8441, amended—s.)

SEC. 10243. **Additional justices may be elected, when.** In all townships having a population of over two thousand inhabitants, it shall be lawful for the qualified voters thereof to elect an additional justice of the peace for every two thousand inhabitants until the population reaches six thousand, after which the number of justices shall not be increased. Said additional justices shall be elected and commissioned and shall have the same powers and perform like duties as other justices of the peace have and perform by law. (R. S. 1889, § 8442.)

SEC. 10244. **Elections to conform to general election law.**— On the day of the township election the polls shall be opened between seven and eight o'clock a. m. and be kept open until six o'clock p. m. by the judges of the election, and when so opened the electors of the township shall have to elect all officers to be chosen at

(r) Election returns, neglect of clerk. 63 A. 460.

(s) 78 Mo. 600.

said election. Said officers shall be chosen by ballot. Each ballot shall contain the name of every officer or measure voted for, written or printed on the face of such ballot, with the name of the office for which the persons voted for are intended to be chosen, which ballot shall be folded so as to conceal the names of the persons voted for; where the names of two or more persons appear on any ballot for the same office, such ballot shall be rejected by the judges in canvassing the votes, only as to the persons erroneously voted for. Said township election shall in all things conform to the general law concerning elections for state and county officers, so far as the same is consistent with the provisions of this chapter. (R. S. 1889, § 8443—t.)

Sec. 10245. **Qualification of voters.**—No person shall be a voter at any township election unless he be a qualified voter at general elections, and has been an actual resident of the township in which he offers to vote for sixty days next preceding such election. (R. S. 1889, § 8444.)

Sec. 10246. **Canvass of votes and disposition of poll-books.**—The votes shall be opened and canvassed according to the laws governing general elections for state and county officers, and, when completed, the poll-books shall be signed by the judges and clerks of election, and, together with the ballots, shall be filed in the office of the township clerk within two days after such election. (R. S. 1889, § 8445.)

Sec. 10247. **Township clerk to transmit list of officers elect to county clerk.**— The township clerk shall transmit to the county clerk, to be filed in his office, a list of the names of the township officers so elected, within five days after such election shall have been held. (R. S. 1889, § 8446.)

Sec. 10248. **Township clerk to notify persons elected.** The township clerk shall, within ten days after such township election, transmit to each person elected to any township office a notice of his election. In case two or more persons shall receive an equal number of votes for the same office, the question of which shall be entitled to the office shall be decided between them by lot, under the direction of the township clerk. (R. S. 1889, § 8447.)

Sec. 10249. **Townships to be election precincts—judges of election.** — Each township acting under township organization may be divided into as many election precincts by the county court as the court may think the convenience of the electors requires; and the judges of all elections held for township purposes shall be

(t) 115 Mo. 20; 57 A. 650; 63 A. 460.

appointed by the township board; but if said board should fail to appoint judges, or if any of the judges appointed should fail or refuse to serve, or not be present by eight o'clock on the day of election, then the electors present shall have power to choose from their number men to act as said judges. The judges of election shall have power to appoint two clerks of said election. The judges and clerks shall be sworn and the election conducted in like manner as elections for state and county officers, except as provided in this chapter. (R. S. 1889, § 8448.)

AN ACT OF CONGRESS CONCERNING NATURALIZATION.

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

I. He shall declare, on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years at least prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty of which the alien may be at the time a citizen or subject.

II. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

III. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

IV. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the

above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

V. Any alien who was residing within the limits and under the jurisdiction of the United States before the 29th day of January, 1795, may be admitted to become a citizen, on due proof made to some one of the courts above specified that he has resided two years at least within the jurisdiction of the United States, and one year at least immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring, on oath, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and, particularly, by name, to the prince, potentate, state or sovereignty whereof he was before a citizen or subject; and also, on its appearing to the satisfaction of the court that, during such term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court shall be recorded by the clerk thereof.

VI. Any alien who was residing within the limits and under the jurisdiction of the United States between the 18th day of June, 1798, and the 18th day of June, 1812, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court that the applicant was residing within the limits and under the jurisdiction of the United States before the 18th day of June, 1812, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States for at least five years immediately preceding the time of such application must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at

least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States. [Be it enacted by the senate and house of representatives of the United States of America, in congress assembled, that the declaration of intention to become a citizen of the United States, required by section 2165 of the Revised Statutes of the United States, may be made, by an alien before the clerk of any of the courts named in said section 2165; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.]

SEC. 2166. Any alien of the age of twenty-one years and upward, who has enlisted or may enlist in the armies of the United States, either the regular or the volunteer forces, and has been or may be hereafter honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied, by competent proof, of such person's having been honorably discharged from the service of the United States.

SEC. 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in section 2165; but such alien shall make the declaration required therein at the time of his admission, and shall further declare, on oath, and prove to the satisfaction of the court, that for two years next preceding it has been his *bona fide* intention to become a citizen of the United States; and he shall, in all other respects, comply with the laws in regard to naturalization.

SEC. 2168. When any alien who has complied with the first condition specified in section 2165 dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

SEC. 2169. The provisions of this title shall apply to aliens [being free white persons, and to aliens] of African nativity, and to persons of African descent.

SEC. 2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission, resided within the United States.

SEC. 2171. No alien who is a native citizen or subject or a denizen of any country, state or sovereignty with which the United States are at war at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States or the territories thereof on the eighteenth day of June in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

SEC. 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are or have been citizens of the United States shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

SEC. 2173. The police court of the District of Columbia shall have no power to naturalize foreigners.

SEC. 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the United States subsequent to the date of such declaration, may,

on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States, for the purpose of manning and serving on board any merchant vessel of the United States anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

# Forms Prepared in Conformity to the Australian Ballot Law—Election 1900.

## *CERTIFICATE OF NOMINATION.

[For State Officers Nominated by Convention.]

THIS IS TO CERTIFY that at a regularly called convention of the —— party of Missouri composed of delegates duly elected from the several counties in the State of Missouri, and held at ——, Mo., on the —— day of ——, 190—, for the purpose of nominating candidates for the offices hereinafter named for the State of Missouri, to be filled at the ensuing general election, to be held on the —— day of November, A. D. 190—: Said convention was organized by the election of ——, whose residence is ——, —— county, Missouri, as presiding officer; and ——, whose residence is ——, —— county, Missouri, as secretary, and that they were the permanent officers of said convention that the —— party represented by said convention of delegates polled at the last general election more than three (3) per cent. of the entire vote cast in the State of Missouri; that said convention nominated the persons hereinafter named, whose place of residence and occupation are set opposite their respective names, as the candidates of the —— party for the offices opposite to which their names herein appear, viz.:

| Office. | Name of candidate. | Residence. | Occupation. |
|---|---|---|---|
| Elector at large | | | |
| Elector at large | | | |
| Elector, 1st district, etc | | | |
| Governor | | | |
| Lieut.-Governor, etc | | | |

WITNESS our hands and seals this —— day of ——, 190—.

————, (Seal) Chairman.

————, (Seal) Secretary.

State of Missouri, } ss.
County of ——, }

Personally appeared before the undersigned, a notary public within and for the county of ——, in the State of Missouri, on the —— day of ——, 190—, who are personally known to me to be the same persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at ——, Missouri, in said county, the day and year first above written.

My commission expires ——, 190—.

(Seal.)

————, Notary Public.

*To be filed with the Secretary of State not more than 60 days and not less than 20 days before the general election.

25840

## *CERTIFICATE OF NOMINATION.

[Of State Officers by Petition of Electors.]

To ————, Secretary of State, Jefferson City, Missouri:
[Name of Secretary.]

The undersigned electors of the State of Missouri, residents of the county of —— therein, pursuant to the election laws of said State, do hereby certify that the persons hereinafter named for nomination are the candidates of the —— party (embodying the principals set out in the State and National platforms of said party) for the offices set opposite their respective names herein, to be voted for at the ensuing general election to be held on Tuesday, Novmeber ——, 190—, and that we and each of us are *bona fide* supporters of the candidate sought to be nominated and have not aided and will not aid in the nomination of any other candidate for the same office, to wit:

| Office. | Name. | Residence. | Occupation. |
|---|---|---|---|
| Elector at large | | | |
| Elector at large | | | |
| Elector, 1st district, etc | | | |
| Governor | | | |
| Lieut.-Governor, etc | | | |

| Names of signers. | Postoffice. | County. |
|---|---|---|
| | | |
| | | |
| | | |

State of Missouri, }
County of ——. } ss.

On this —— day of ——, 190—, before me, a notary public within and for the county of ——, personally appeared (here insert all the names of electors signed to the foregoing petition), to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at office in ——, Missouri, the day and year first above written.

My term of office as a notary public will expire —— day of ——, 190—.

————, Notary Public.

(Seal.)

*This form can readily be adapted to the nomination of circuit and district candidates.

[To be signed by electors equal to one per cent. of the entire vote cast in the State at the last preceding general election, though such names shall be not less than fifty and not exceed 1,000, and to be filed with the Secretary of State not more than 60 and not less than 20 days before the general election.]

## *CERTIFICATE OF NOMINATION.

[For District or Circuit, where only One Candidate is Nominated.]

THIS IS TO CERTIFY that at a regularly called convention of the —— party of Missouri, composed of delegates duly elected from the several counties in the —— (district or circuit) and held at ——, —— county, Missouri, on the —— day of ——, 190—, for the purpose of nominating a candidate for —— to be filled at the general election to be held on Tuesday, the —— day of November, 190—, said convention was organized by the election of ——, whose residence is ——, —— county, Missouri, as presiding officer, and ——, whose residence is ——, —— county, Missouri, as secretary, and that they were the permanent officers of said convention; that the —— party, represented by said convention of delegates, polled at the last general election more than (3) three per cent. of the entire vote cast in the State of Missouri; that said convention nominated ——, whose place of residence is ——, —— county, Missouri, and whose occupation is that of a —— as the —— nominee for ——.

WITNESS our hands and seals this —— day of ——, 190—.

———— (Seal) Chairman.

———— (Seal) Secretary.

State of Missouri, } ss.
County of ——. }

Personally appeared before the undersigned, a notary public within and for the county of ——, in the State of Missouri, on the —— day of ——, 190—, —— who are personally known to me to be the same persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at ——, Missouri, in said county, the day and year first above written.

My commission expires ——, 190—.

(Seal.) ————, Notary Public.

---

*(To be filed with the Secretary of State not more than sixty and not less than twenty days before the general election.†)

†Candidates for districts or circuits wholly within a county or city must be certified to county clerks or commissioners of elections.

N. B.—Where there are more nominees than one their names, residences and occupations may be set out in the same certificate. The names of the presiding officer and secretary may be included in one acknowledgment, or they may be set out in separate acknowledgments.

## *CERTIFICATE OF NOMINATION.

[For County Officers Nominated by a Convention of Delegates.]

THIS IS TO CERTIFY that at a regular called convention of the —— party, composed of delegates duly elected from the several townships composing the county of ——, in the State of Missouri, held at —— in said county, on the —— day of ——, A. D. 190—, for the purpose of nominating candidates for the offices hereinafter named for —— county, in Missouri, to be filled at the ensuing general election, to be held on the —— day of November, A. D. 190—, which said convention was organized by the election of —— of ——, —— county, Missouri, as Chairman, and —— of ——, —— county, Missouri, as Secretary, and they were the permanent officers of said convention; that the —— party, represented by said convention of delegates, polled at the last general election more than three (3) per cent. of the entire vote

25841

cast in said county at the last preceding general election; that the said convention for said —— county, Missouri, nominated the persons hereinafter named, and whose place of residence and occupation are set opposite their respective names, as the candidates of the —— party for the county offices opposite to which their names appear, viz.:

| Office. | Name of candidate. | Residence. | Occupation. |
|---|---|---|---|
| Representative | | | |
| Judge of the County Court——District | | | |
| Judge of the County Court——District | | | |
| Collector of the Revenue | | | |
| Surveyor | | | |
| Public Administrator | | | |
| Assessor | | | |
| Prosecuting Attorney | | | |
| Sheriff | | | |
| Treasurer | | | |
| Coroner | | | |

WITNESS our hands and seals this —— day of ——, 190—.

———— (Seal) Chairman.

———— (Seal) Secretary.

State of Missouri, }
County of ——. } ss.

Personally appeared before the undersigned, a notary public within and for the county of ——, in the State of Missouri, on the —— day of ——, 190—, ——, who are personally know to me to be the same persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at ——, Missouri, in said county, the day and year first above written.

My commission expires ——, 190—.

(Seal.)

————, Notary Public.

*To be filed with the County Clerk not more than 60 and not less than 15 days before the general election.

## *CERTIFICATE OF NOMINATION.

[For County Officers by Primary Election.]

THIS IS TO CERTIFY that at a primary election of the —— party, of —— county, regularly called by and held under the auspices of the —— County Central Committee for —— county, in the State of Missouri, in said county, on the —— day of ——, A. D. 190—, for the purpose of nominating candidates for the offices hereinafter named for —— county, in Missouri, to be filled at the ensuing general election, to be held on the —— day of November, A. D. 190—, said primary election for said —— county, Missouri, nominated the persons hereinafter named, and whose places of residence and occupation are set opposite their respective names, as the candidates of the —— party for the county offices opposite to which their names appear, namely:

| Office. | Name of candidate. | Residence. | Occupation. |
|---|---|---|---|
| Representative..... | | | |
| Judge of the County Court——District. | | | |
| Judge of the County Court——District. | | | |
| Collector of the Revenue..... | | | |
| Assessor..... | | | |
| Surveyor..... | | | |
| Public administrator..... | | | |
| Prosecuting Attorney..... | | | |
| Sheriff..... | | | |
| Treasurer..... | | | |
| Coroner..... | | | |

And that the —— party polled at the last general election more than three (3) per cent. of the entire vote cast in said county.

WITNESS our hands and seals this —— day of ——, 190—.

———— (Seal) Chairman —— Central Committee for —— County.

———— (Seal) Secretary —— Central Committee for —— County.

State of Missouri, } ss.
County of ——. }

Personally appeared before the undersigned, a notary public within and for the county of ——, in the State of Missouri, on the —— day of ——, 190—, who are personally known to me to be the same persons who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at ——, Missouri, in said county, the day and year first above written.

My commission expires ——, 190—.

(Seal) ————, Notary Public.

*To be filed with the County Clerk not more than 60 and not less than 15 days before the general election.

## Correct Form of Ticket and Titles of Officers—Election of 1900.

.....Ticket.
(Name of party.)

For Presidential Electors:

At Large .....

.....

At Large .....

.....

1st Dist. .....

.....

2nd Dist. .....

.....

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2d Dist. .....

.....

4th Dist. .....

.....

5th Dist. .....

.....

6th Dist. .....

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7th Dist. .....

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8th Dist. .....

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9th Dist. .....

.....

10th Dist. .....

.....

11th Dist. .....

.....

12th Dist. .....

.....

13th Dist. .....

.....

14th Dist. .....

.....

15th Dist. .....

.....

For Governor:

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For Lieutenant-Governor:

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For Secretary of State:

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For State Auditor:

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For State Treasurer:

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For Attorney-General:

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For Railroad and Warehouse Commissioner:

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For Judge of Supreme Court:

.....

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For Judge ..... Court of Appeals:

.....

.....

FIRST CONSTITUTIONAL AMENDMENT—(Making indictment or information concurrent remedies in criminal prosecutions)—YES.

FIRST CONSTITUTIONAL AMENDMENT—(Making indictment or information concurrent remedies in criminal prosecutions)—NO.

SECOND CONSTITUTIONAL AMENDMENT—(Providing for the levy of a special road and bridge tax of 15 cents)—YES.

SECOND CONSTITUTIONAL AMENDMENT—(Providing for the levy of a special road and bridge tax of 15 cents)—NO.

THIRD CONSTITUTIONAL AMENDMENT—(Providing that the value of property subject to mortgage, deed of trust, etc., less the value of such security, shall be assessed to the owner of the property, and the value of the security assessed to the owner thereof; and that a contract made in violation of such provision is null and void)—YES.

THIRD CONSTITUTIONAL AMENDMENT—(Providing that the value of property subject to mortgage, deed of trust, etc., less the value of such security, shall be assessed to the owner of the property, and the value of the security assessed to the owner thereof; and that a contract made in violation of such provision is null and void)—NO.

FOURTH CONSTITUTIONAL AMENDMENT—(Authorizing the issue of bonds by the City of St. Louis in aid of World's Fair)—YES.

FOURTH CONSTITUTIONAL AMENDMENT—(Authorizing the issue of bonds by the City of St. Louis in aid of World's Fair)—NO.

FIFTH CONSTITUTIONAL AMENDMENT—(Authorizing the State to appropriate $1,000,000 from sinking fund for purpose of State exhibit at World's Fair)—YES.

FIFTH CONSTITUTIONAL AMENDMENT—(Authorizing the State to appropriate $1,000,000 from sinking fund for purpose of State exhibit at World's Fair)—NO.

SIXTH CONSTITUTIONAL AMENDMENT—(Providing that no grand jury shall be convened except upon order of judge of court having power to try and determine felonies; but when so assembled, may indict for any crime)—YES.

SIXTH CONSTITUTIONAL AMENDMENT—(Providing that no grand jury shall be convened except upon order of judge of court having power to try and determine felonies; but when so assembled, may indict for any crime)—NO.

SEVENTH CONSTITUTIONAL AMENDMENT—(Providing that in courts not of record, two-thirds of jury may render verdict in civil cases, and in criminal cases, three-fourths of jury)—YES.

SEVENTH CONSTITUTIONAL AMENDMENT—(Providing that in courts not of record, two-thirds of jury may render verdict in civil cases, and in criminal cases, three-fourths of jury)—NO.

For Representative in Congress:

.....

.....

For State Senator:

.....

.....

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*For Representative:

.....

.....

For Sheriff:

.....

.....

For Collector of the Revenue:

.....

.....

For Prosecuting Attorney:

.....

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For Judge County Court, ..... District:

.....

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For Judge County Court, ..... District:

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For County Treasurer:

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For Coroner:

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For County Assessor:

.....

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For County Surveyor:

.....

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For Public Administrator:

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For .....

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For .....

.....

.....

For Constable, ..... Township:

.....

.....

*If more than one, insert number of district.

# INDEX.


| | Sec. | Page |
|---|---|---|
| **ABSTRACT OF VOTES—** | | |
| shall be transmitted to secretary of State | 7011 | 16 |
| how indorsed | 7011 | 16 |
| special messenger may be sent after | 7012 | 17 |
| clerk failing to transmit—penalty | 7013 | 17 |
| in cities of 300,000 inhabitants, transmitted by election commissioners | 7257 | 92 |
| of 100,000 inhabitants, by county clerk | 7330 | 136 |
| of the first class to be made out and certified to secretary of state | 7257 | 184 |
| **ALIENS—** | | |
| not to be appointed or elected to office | (Const.) 12 | 6 |
| act of congress concerning naturalization of | | 269 |
| **AMENDMENTS—** | | |
| (See "Constitutional Amendments.") | | |
| **ANIMALS**—Election on restraint of, how submitted | 4783-4790 | 233 |
| **APPEALS**—Right of, in all contested elections | 7071 | 29 |
| **APPELLATE COURTS—** | | |
| abstract of votes for judges of, to be transmitted to secretary of State | 7011 | 16 |
| in case of tie for judge of | 7015 | 17 |
| contested election for judge of, determined where | 7066 | 26 |
| contestor to present petition, when | 7057 | 26 |
| judges of, how nominated | 7162 | 51 |
| nomination void, when | 7162 | 51 |
| election and term of office of judges of | 1641, 1651 | 170 |
| **ASSESSORS—** | | |
| election and term of office of, except in St. Louis city | 9137 | 166 |
| certificate of election of | 9138 | 167 |
| **ASYLUMS—** | | |
| certain counties authorized to create indebtedness to establish and maintain | 4906-4911 | 222 |
| **ATTORNEY-GENERAL—** | | |
| term of office | (Const.) 2 | 3 |
| abstracts of votes for, to be transmitted to whom | 7011 | 16 |
| tie in election for, how determined | 7019 | 19 |
| contested election for, determined, where | 7066 | 26 |
| contestor to present petition, when | 7057 | 26 |
| duties of, under law of corrupt practices | 7184 | 61 |
| **AUDITOR, STATE—** | | |
| term of office | (Const.) 2 | 3 |
| abstract of votes for, to be transmitted to whom | 7011 | 16 |
| returns of election for, to be delivered to speaker of House | 7018 | 18 |
| tie in election of, how determined | 7019 | 19 |
| contested election for, determined where | 7066 | 26 |
| contestor to present petition, when | 7057 | 26 |
| **AUSTRALIAN BALLOT LAW**, not to apply in certain elections | 7116 | 41 |

| | Sec. | Page |
|---|---|---|
| BALLOTS— | | |
| election to be by | 6962 | 20 |
| how voted, counted—to whom delivered—preserved, how long | 6965 | 21 |
| judges shall count, how | 6966 | 21 |
| fraudulent, when | 6968 | 21 |
| in part, when | 6969 | 21 |
| in contested election, may be opened and counted, when—procedure | 7040-7048 | 34 |
| printing—delivery—payment of | 7077 | 43 |
| shall be furnished by county clerk—to include, what | 7085 | 46 |
| form of | 7086 | 46 |
| to be furnished by county clerks when any question is submitted | 7087 | 46 |
| number of, to be provided | 7088 | 46 |
| to be delivered to judges of election | 7089 | 47 |
| to be printed under direction of county court | 7090 | 47 |
| error or omission in, how corrected | 7092 | 47 |
| judge to deliver to voter—to be marked, how | 7094 | 48 |
| disposition of, by voter | 7096 | 48 |
| spoiled, judge to furnish another—disposition of | 7097 | 49 |
| to be numbered as voted | 7099 | 49 |
| in primary election in city of 100,000 or over, how furnished | 7104 | 49 |
| number of | 7105 | 49 |
| shall contain, what | 7107 | 49 |
| names and delegations, how placed on | 7108 | 49 |
| in primary election of city of 300,000 and over, how furnished | 7152 | 59 |
| names and delegations, how placed on | 7153 | 59 |
| circulating fradulent, a misdemeanor | 7212 | 102 |
| form of, in election for consolidation of cities | 6504 | 254 |
| creating indebtedness by cities | 6512 | 255 |
| issue of bonds for park purposes | 6608 | 258 |
| issue of bonds for street improvements, etc., in cities of 10,000 or less | 6677 | 259 |
| levying tax for library and building fund | 6678 | 260 |
| when county votes to create indebtedness to build and maintain asylum | 4909 | 257 |
| to create indebtedness to build court-house or jail | 5174 | 258 |
| on dramshop local option law | 5900 | 282 |
| to restrain animals | 4756 | 257 |
| opening new road | 9486 | 258 |
| on question of adoption of township organization for road purposes | 3616 | 258 |
| on adoption of local option road law | 9600 | 261 |
| on adoption of law to create special road districts | 9631 | 262 |
| for issue of bonds to erect school houses | 9712 | 248 |
| to organize common school district into a city district | 9861 | 251 |
| on adoption of township organization law | 11250 | 301 |
| official form of | | 253 |
| BALLOT-BOXES— | | |
| provided by whom—duty of constable | 6960 | 19 |
| number of, to be provided | 6696 | 21 |
| not to be opened, when | 7002 | 34 |
| stealing ballot-box in election in city under special charter voids election | 6585 | 267 |
| BETTING, on election—penalty | 2211 | 101 |
| BONDS— | | |
| cities of 100,000 and less than 300,000 may issue, for water-works property | 6492 | 198 |
| cities of second class, may issue for improvements | 3560 | 192 |
| cities may issue for park purposes | 6608 | 217 |
| cities under special charter and of 10,000 or less, may issue for street improvements, etc. | 6670-6678 | 258 |
| certain counties may issue to build and maintain asylums | 4906-4911 | 257 |
| counties may issue, to build court-house or jail | 5173 | 258 |
| school district may issue, for erection of school houses | 9752 | 246 |
| cities of 50,000 and less than 300,000 may issue, for erection of school houses or library building | 6892 | 258 |

25845


| | Sec. | Page |
|---|---|---|
| BOOTHS— | | |
| to be provided—number—who allowed within | 7103 | 38 |
| one person to occupy at one time | 7106 | 39 |
| destroying supplies of—penalty | 7112 | 40 |
| BRIBERY— | | |
| under "Corrupt Practices" article | 7171-7173 | 54 |
| bribing public officer—punishment | 2084 | 150 |
| officer accepting | 2085 | 151 |
| bribing officer to appoint to office | 2086 | 151 |
| officer accepting | 2087 | 152 |
| accepting office procured by | 2088 | 152 |
| attempting to bribe officer for office | 2089 | 152 |
| to procure office | 2090 | 153 |
| accepting, to procure office | 2091 | 153 |
| voter accepting bribe | 2092 | 153 |
| offering bribe to voter | 2093 | 153 |
| CENTRAL COMMITTEE— | | |
| defined—powers in filling vacancy in nomination | 7088 | 33 |
| may order primary election in county with 100,000 inhabitants | 7163 | 51 |
| shall give notice—notice to contain what | 7163 | 51 |
| may secure benefit of law, how | 7169 | 54 |
| CERTIFICATE OF ELECTION— | | |
| shall be given to whom | 7007 | 15 |
| of representative, shall contain what statement | 7009 | 15 |
| person holding, to serve pending contest | 7030 | 20 |
| CERTIFICATES OF NOMINATION— (See "Nominations of Candidates.") | | |
| CHALLENGERS— | | |
| any person may challenge a vote | 7105 | 38 |
| in cities of 300,000, may be appointed | 7248 | 87 |
| in cities of 100,000, rights and powers | 7316 | 127 |
| may be present when vote is canvassed | 7318 | 129 |
| electioneering at polling place—penalty | 7353 | 145 |
| CIRCUIT ATTORNEY— (See "Prosecuting Attorney.") | | |
| CIRCUIT COURTS— | | |
| abstract of votes for judges of, to be transmitted to whom | 7011 | 16 |
| in case of tie in election for judge of, governor shall call special election | 7015 | 17 |
| shall have jurisdiction in contest, when | 7029 | 20 |
| to be determined in summary manner | 7033 | 22 |
| may call new election to determine, when | 7035 | 22 |
| contested election for judge of, where and how determined | 7061 | 27 |
| proceedings | 7062 | 27 |
| clerk of, to issue summons, when—returnable, when | 7063 | 27 |
| jurisdiction of | 7064 | 28 |
| appeal from—pending, contestee to hold office | 7065 | 28 |
| shall have supervisory control over registration of officers in cities of 25,000 and less than 100,000 | 7212 | 71 |
| list of judges and clerks of election in cities of 100,000 to be reported to—duty of | 7278 | 101 |
| clerk of, to furnish names of persons convicted of felony to election commissioners | 7281 | 104 |
| shall sit to hear applications to have names restored to register, when | 7299 | 121 |
| appeals allowed | 7300 | 122 |
| election and term of office of judges of | 1673 | 171 |
| judges of, to pass on ordinance authorizing issue of bonds for improvements in cities of second class | 5562 | 192 |

| | Sec. | Page |
|---|---|---|
| CITIES— | | |
| having registration, oath of judges of election | 6969 | 9 |
| in certain, polls opened and closed, when | 6991 | 11 |
| adjoining cities may consolidate | 6502-6507 | 214 |
| may incur indebtedness, how | 6350-6352 | 210 |
| may levy tax for library and building fund—election for | 6466, 6473-6478 | 220 |
| elections in, on adoption of dramshop local option law, held when | 3028 | 221 |
| of the first class—registration of voters had, when (Const.) | 5 | 3 |
| (See "Municipal Elections.") | | |
| of third-class—registration of voters had, when (Const.) | 5 | 3 |
| (See "Municipal Elections.") | | |
| of third-class—registration of voters had when (Const.) | 5 | 3 |
| (See "Municipal Elections.") | | |
| of fourth-class—(See "Municipal Elections.") | | |
| of 300,000 inhabitants or over—primary elections in | 7146-7161 | 43 |
| expenses, how paid | 7157 | 50 |
| registration and elections in | 7222-7239 | 72 |
| probate clerk in—election, term of office | 6244 | 167 |
| justices and constables in—election and term of office | 6508 | 169 |
| school directors in—election of | 9919 | 352 |
| (See "Municipal Elections.") | | |
| of 100,000 inhabitants or over—primary elections in | 7131-7145 | 43 |
| expenses of, how paid | 7145 | 47 |
| registration and elections in | 7270-7289 | 97 |
| proper officer of, to furnish election commissioners with list of deceased male adults | 7282 | 105 |
| may frame special charter | 6359 | 210 |
| may annex adjacent territory for school purposes | 9970 | 364 |
| (See "Municipal Elections.") | | |
| of 50,000 and less than 300,000 inhabitants—election of school directors | 9882 | 256 |
| under special charter and of 10,000 or less—may issue bonds for street improvements, etc | 6273-6278 | 215 |
| CITIZENSHIP— | | |
| conviction in what cases forfeits | 1991 | 150 |
| pardon, effect of | 2288 | 150 |
| not lost, when | 2289 | 150 |
| alien admitted to, how | | 259 |
| CLERKS OF COURTS OF RECORD— | | |
| election—term of office of—commission | 513 | 167 |
| of probate clerk in city of 300,000 | 6244 | 167 |
| of county court—duty of when court establishes or alters precinct | 6985 | 9 |
| returns of elections shall be made to | 6987 | 9 |
| shall deposit ballots in his office and keep for twelve months | 6996 | 11 |
| election laws furnished to, by secretary of state | 7004 | 15 |
| shall send sheriff for poll-books, when | 7006 | 15 |
| shall cast up votes, when and how | 7007 | 15 |
| shall give certificate of election to whom | 7007 | 15 |
| shall cast up votes publicly | 7008 | 15 |
| shall include in certificate of election of representative what statement | 7009 | 15 |
| duty of, in certifying election of state senator | 7010 | 16 |
| shall transmit abstract of votes for certain officers to whom | 7011 | 16 |
| shall indorse envelope, how | 7011 | 16 |
| failing to transmit—penalty | 7013 | 17 |
| compensation of, for conveying returns of any senatorial election | 7020 | 19 |
| penalty for failure to do duty | 7021 | 19 |
| may call election to determine tie, when | 7027 | 20 |

| | Sec. | Page |
|---|---|---|
| CLERKS OF COURTS OF RECORD—Continued— | | |
| shall open, count and compare ballots, when | 7044 | 24 |
| shall give notice of, when and how | 7045 | 24 |
| may permit to be present, whom | 7046 | 24 |
| shall permit ballots to be examined by whom | 7047 | 25 |
| shall make return to writ | 7047 | 25 |
| shall reseal ballots | 7048 | 25 |
| certificate of, prima facie evidence | 7049 | 25 |
| certificates of nominations for county officers to be filed with | 7080 | 30 |
| to be preserved by | 7085 | 31 |
| to be filed with, when | 7087 | 32 |
| to fill vacancy in, to be filed with, when | 7087 | 32 |
| objected to, power and duty of | 7089 | 34 |
| names of candidates, etc., to be certified by secretary of state, when | 7090 | 35 |
| to be published by, when | 7091 | 35 |
| list of, to be arranged, how | 7092 | 35 |
| not to be included in list, when | 7093 | 35 |
| proposed constitutional amendment included in list for publication | 7094 | 36 |
| shall furnish ballots—to include what | 7095 | 36 |
| when any question is submitted | 7097 | 36 |
| number to be supplied | 7098 | 36 |
| shall furnish printed instructions for voters | 7110 | 40 |
| shall post up posters of proposed constitutional amendments at polls | 7119 | 42 |
| shall certify returns of election on proposed constitutional amendments to secretary of state | 7123 | 43 |
| statement of expenses of candidates to be filed with | 7180 | 59 |
| shall provide registration book for cities of 25,000 and less than 100,000 | 7199 | 66 |
| shall deliver to registrar, when | 7202 | 68 |
| shall deliver original and copy to judges of election, when | 7207 | 70 |
| shall furnish additional registration lists to city, when | 7211 | 71 |
| in counties having a city of 100,000 shall transmit abstract of votes to secretary of state | 7330 | 136 |
| shall issue certificates of election to certain officers | 7331, 7332 | 136 |
| shall give certificate of election to sheriff | 10034 | 181 |
| duty of, when cities consolidate | 6506 | 215 |
| duty of, when county votes on proposition to create indebtedness to build and maintain asylums | 4907 | 223 |
| of court criminal correction, St. Louis city—election—qualification and term of office of | (Appendix) 3 | 172 |
| of criminal court of Jackson county—election—qualifications—term of office and compensation of | (Appendix) 9 | 173 |
| of Sturgeon court common pleas—term of office | (Appendix) 8 | 175 |
| when elected | 10 | 175 |
| certificate of election of, transmitted to governor | 11 | 176 |
| CLERKS OF ELECTIONS— | | |
| shall be appointed, how | 6986 | 9 |
| by whom—oath | 6990 | 10 |
| duty of, during election | 6995 | 11 |
| shall not disclose vote of any voter—penalty | 6995 | 11 |
| shall not disclose state of polls | 6996 | 12 |
| qualifications of | 6997 | 13 |
| shall attest poll-books | 6998 | 13 |
| shall enter names of voters | 6999 | 13 |
| shall not open ballot boxes, when—penalty | 7003 | 14 |
| free from arrest, when | 7024 | 19 |
| compensation of | 7072 | 29 |
| in primaries in cities of 100,000 inhabitants or over, how appointed | 7139 | 46 |
| compensation of | 7140 | 47 |
| duties of | 7141 | 47 |
| guilty of misdemeanor, when | 7144 | 47 |

CLERKS OF ELECTIONS—Continued— Sec. Page
in primaries in cities of 300,000 and over, how appointed ..... 7149 45
compensation of ..... 7153 50
duties of ..... 7156 50
guilty of misdemeanor, when ..... 7161 51
in counties with 100,000 inhabitants, how appointed—oath—violation of, penalty ..... 7165 52
duties of, in registration of voters in cities of 25,000 and less than 100,000 inhabitants ..... 7208 71
duties of, in cities of 300,000 as to registration ..... 7220-7225 76
how appointed—term of appointment ..... 7229 73
absence from polls, places how filled—penalty ..... 7244 81
compensation of ..... 7267 96
in cities of 100,000 inhabitants, by whom appointed—qualifications ..... 7275 100
how chosen—penalty for failure to serve ..... 7276 100
examination of—term of service ..... 7277 101
list of, to be reported to circuit court ..... 7278 101
oaths of ..... 7279 104
subsequent selection of ..... 7287 104
duties of, when registration shall be made ..... 7290-7297 107
penalty for false affidavit ..... 7295 118
absent from polls, vacancy, how filled ..... 7311 125
penalty for detention of poll-books ..... 7311 125
duties of ..... 7312 125
duties of, in canvassing vote ..... 7318-7326 129
penalty for failure to deliver ballot-boxes, etc., to election commissioners ..... 7325 135
punishment of, as clerk of election ..... 7326 140
as canvasser of votes ..... 7338 140
as clerk of registration ..... 7340 141
stealing, destroying, etc., any record, poll-list, etc ..... 7341 141
guilty of illegal registration—penalty ..... 7351 146
electioneering at polling places—penalty ..... 7353 146
compensation of ..... 7361 148
number of days services credited to ..... 7362 148
city to pay, when ..... 7363 148
county, when ..... 7364 148
exempt from jury service ..... 7367 149
guilty of fraud, a misdemeanor ..... 2116 157
neglecting to perform duty, a misdemeanor ..... 2118 158
in villages, how appointed ..... 6051 301

COLLECTORS—election and term of office ..... 9200 170

COMMISSIONERS OF ELECTION—

(See "Election Commissioners.")

COMMON PLEAS COURTS—
in case of tie in election for judge of, governor shall call special election ..... 7015 11
at Sturgeon—established when ..... (Appendix) 1 175
8 175
clerk of—qualifications and term of office ..... 10 175
election of ..... 11 176
certificate of election of, transmitted to the governor ..... (Appendix) 1 176
at Cape Girardeau—established, when ..... 5 176
election of judge of ..... 7020 13

COMPENSATION—
of clerks and messengers ..... 7072 29
of judges and clerks of election ..... 7267 96
of election commissioners and judges and clerks of election in cities of 300,000 ..... 7360, 7361 147
in cities of 100,000 .....

25847


| | Sec. | Page |
|---|---|---|
| **CONGRESS—** | | |
| election for member of, when held | 6982 | 8 |
| abstract of votes for member of, to be transmitted to secretary of state | 7011 | 16 |
| in case of tie in election for member of, governor to call special election | 7015 | 17 |
| act of, concerning naturalization | — | 269 |
| form of certificate of nomination for member of | — | 276 |
| **CONSOLIDATION OF CITIES**—adjoining cities may consolidate | 6502-6507 | 214 |
| **CONSTABLES—** | | |
| shall have care of ballot-boxes | 6993 | 10 |
| shall be in attendance at polls on election day | 7025 | 19 |
| shall deliver ballots to judges of election, when—compensation | 7099 | 37 |
| election of, certified to county clerk—term of office | 877 | 168 |
| in cities of 300,000 inhabitants | 6508 | 169 |
| number of districts | 6509 | 169 |
| division of districts, who to make | 6511 | 169 |
| **CONSTITUTIONAL AMENDMENTS—** | | |
| submitted, when | 7094 | 36 |
| publication of—posting notices of | 7119 | 42 |
| secretary of state to designate newspapers—how paid | 7120 | 42 |
| to be numbered | 7121 | 42 |
| vote on, to be by ballot— submitted how—method of voting | 7122 | 42 |
| election conducted, how—returns certified to whom | 7123 | 43 |
| proceedings after election | 7124 | 43 |
| for removal of seat of government—bonds, etc | 7125 | 44 |
| when and where deposited | 7126 | 44 |
| **CONSTITUTIONAL PROVISIONS—** | | |
| elections must be free and open | 9 | 3 |
| state executive officers—terms of | 2 | 3 |
| time of holding elections for | 2 | 3 |
| returns—tie, how determined | 3 | 3 |
| general elections, when held | 1 | 4 |
| electors, qualifications of | 2 | 4 |
| elections, how conducted and contested | 3 | 4 |
| voters, free from arrest, when | 4 | 5 |
| registration in cities and counties | 5 | 5 |
| elections viva voce, when | 6 | 5 |
| residence as voter not gained or lost, when | 7 | 5 |
| who disqualified as voters | 8 | 5 |
| contested elections, trials of | 9 | 5 |
| criminals may be disqualified | 10 | 6 |
| soldiers or marines in U. S. service disqualified as voters | 11 | 6 |
| aliens not to be appointed or elected | 12 | 6 |
| township organization—county justices | 9 | 6 |
| discontinuance of | 9 | 6 |
| constitution, how amended | 1, 2 | 7 |
| **CONTESTED ELECTIONS—** | | |
| proceedings in | (Const.) 3 | 4 |
| trials and determination of | (Const.) 9 | 5 |
| circuit court to have jurisdiction in, when | 7029 | 20 |
| county court, when | 7029 | 200 |
| notice of, how served | 7029 | 20 |
| pending, person holding certificate of election serve | 7030 | 21 |
| contestee to give notice, when | 7031 | 21 |
| parties allowed process—may take depositions | 7032 | 21 |
| to be determined in a summary manner | 7033 | 22 |
| cost, how adjudged | 7034 | 22 |
| new election to determine, may be held, when | 7035 | 22 |
| in election for member of legislature | 7036 | 22 |
| depositions to be taken by whom | 7037 | 22 |

CONTESTED ELECTIONS—Continued— Sec. Page
contestee failing to select justice, contestor may select a second—their power ..... 7038 32
contestee shall give notice to adverse party, when..... 7039 32
justice failing to attend, another shall be selected..... 7040 32
taking of depositions shall commence, when..... 7041 32
depositions to be certified to whom..... 7042 32
irrelevant testimony to be rejected..... 7043 34
county clerk to open, count and compare ballots, when—shall certify result ..... 7044 34
writ to be served—clerk to give notice..... 7045 34
clerk to open ballots—who may be present..... 7046 34
ballots may be examined by whom—clerk's return to contain, what..... 7047 35
ballots to be re-sealed..... 7048 35
clerks certificate prima facie evidence..... 7049 35
in election for governor and lieutenant-governor—how and where decided.. 7050 35
contestor to present petition to general assembly..... 7051 35
joint committee appointed by general assembly, when—its powers..... 7052 35
notice of time and place of taking depositions..... 7053 36
privilege of cross-examination ..... 7054 36
report of committee—day for decision to be fixed..... 7055 36
in election for judges of supreme and appellate courts, secretary of state and certain other state officers..... 7056 36
petition to be presented, when and where ..... 7057 36
supreme court to appoint commissioner to take testimony..... 7058 37
commissioner's power ..... 7059 37
shall proceed, how ..... 7060 37
in election for circuit judge..... 7061 37
proceedings ..... 7062 37
summons to issue—returnable when..... 7063 37
contestee to answer, when—jurisdiction..... 7064 38
supreme court to advance appeal on docket..... 7065 38
shall proceed, how ..... 7066 38
in election for judge of criminal and probate courts in St. Louis city..... 7067 38
proceedings ..... 7068 38
in election for circuit or assistant circuit attorneys..... 7069 39
proceedings ..... 7070 39
right of appeal in all cases of ..... 7071 39
in election for presidential electors, how determined..... 6025 103
in election for office of mayor city third-class—council to determine..... 5756 194

CONVENTION OF DELEGATES—
defined ..... 7081 31
officers of, to sign certificate of nomination..... 7083 31

CORONERS—
election of, when held ..... 6982 8
election and term of office of ..... (Const.) 10 181

CORPORATIONS—
shall allow employes time in which to vote—penalty..... 7175 57
using threats or contributing money, etc.,—penalty..... 7176 57
officers of, threatening to discharge to influence employe—penalty..... 7177 58
shall not import persons to discharge duties of peace officers—penalty..2141, 2143 159
importing armed detectives, etc..... 2144 159
penalty ..... 2147 160

CORRUPT PRACTICES—
who deemed guilty of bribery—penalty..... 7171 54
other persons deemed guilty of bribery—penalty..... 7172 56
candidates guilty of bribery, etc., when—penalty.. ..... 7173 56
inducing persons to vote by threat or violence—penalty..... 7174 56
employes given time in which to vote—penalty ..... 7175 57

| | Sec. | Page |
|---|---|---|
| CORRUPT PRACTICES—Continued— | | |
| corporation using threats or money, etc.—penalty | 7176 | 57 |
| officer of, threatening to discharge employe to influence him—penalty | 7177 | 58 |
| personation of another—penalty | 7178 | 58 |
| amount to be expended by candidates—how determined | 7179 | 59 |
| statement of, filed where—penalty for failure | 7180, 7181 | 59 |
| filed, when | 7182 | 60 |
| person receiving next highest vote declared elected, when | 7183 | 60 |
| attorney-general, duties of | 7184 | 61 |
| failing to act, suit brought by whom | 7185 | 61 |
| action to have preference on docket | 7186 | 62 |
| judgment in favor of state or plaintiff, when | 7187 | 62 |
| office declared vacant, when | 7188 | 62 |
| person not excused from answering questions, when | 7189 | 62 |
| who deemed a political committee | 7190 | 63 |
| shall appoint treasurer | 7191 | 63 |
| duties of | 7192 | 63 |
| shall file statement, when and where | 7193 | 64 |
| statement to be open to inspection | 7194 | 64 |
| failing to file statement—penalty | 7196 | 65 |
| failing to perform other duties—penalty | 7196 | 65 |
| COSTS IN CONTESTED ELECTION—how adjudged | 7034 | 22 |
| COUNTIES— | | |
| registration of voters in, had when | (Const.) 5 | 5 |
| primary elections in, containing 100,000 inhabitants, how held | 7163-7170 | 51 |
| form for certificate of nomination of officers of, by convention | | 276 |
| by primary | | 277 |
| may create indebtedness for establishing insane asylums, when | 4906-4911 | 222 |
| may create indebtedness for building court-house or jail | 5172,-5176, 6709-6711 | 225 |
| may divide or form new county—may remove county seats | 6705-6715, 6738-6740 | 228 |
| COUNTY SUPERVISION OF SCHOOLS—how adopted | 9810 | 251 |
| COUNTY COURTS— | | |
| number of judges of, not to be increased | (Const.) 8 | 6 |
| judges, election of, when held | 6982 | 8 |
| failings to designate place of holding elections, procedure | 6983 | 8 |
| may establish and alter precincts | 6984 | 8 |
| order shall describe, what | 6985 | 9 |
| shall appoint judges of election | 6996 | 12 |
| shall have jurisdictions in contests, when | 7029 | 20 |
| to be determined in a summary manner | 7033 | 22 |
| may call new election to determine, when | 7035 | 22 |
| printing and distributing of ballots, etc., to be under direction of | 7100 | 37 |
| shall appoint additional judges of election | 7101 | 37 |
| election and term of office of judges of | 1772 | 172 |
| election of judge, how certified—proceedings in case of tie | 1773 | 172 |
| shall decide tie in election of justices of the peace | 3812 | 177 |
| in case of tie in election for recorder of deeds, shall order new election | 9083 | 180 |
| shall select county treasurer in case of tie | 6766 | 183 |
| shall order an election for the consolidation of cities, when | 6503 | 214 |
| authorized to purchase land and maintain insane asylum | 4902 | 222 |
| shall call election on proposition to create indebtedness for, when | 4906 | 222 |
| shall call election on proposition to create indebtedness to build jail or court-house, when | 5172 | 225 |
| shall call election on proposition to form new counties or to remove county seats, when | 6705, 6738 | 228 |
| shall call election on adoption of dramshop local option law | 3027 | 230 |
| shall propose increase of levy for road purposes at election, when | 9461 | 235 |
| shall open new road, when—election to determine, held, when | 9486-9487 | 236 |

COUNTY COURTS—Continued— Sec. Page
shall submit question for adoption of township organization for road purposes law, when ..... 9616 228
shall call election to determine whether indebtedness be incurred for road improvements, when ..... 9561 229
shall call election for adoption of local option road law, when..... 9600 241
of special road district law..... 9631 242
of law providing for working roads by contract in counties under township organization ..... 10339 243

COURT OF CRIMINAL CORRECTION, ST. LOUIS—
established, when .....(Appendix) 1 172
election, qualifications and terms of judge and officers of..... 3 172

COURT-HOUSES AND JAILS—
election to create indebtedness to build, how called and held.....
5172-5176, 6709-6711 225

CRIMES AND PUNISHMENTS—
voter free from arrest, when .....(Const.) 4 5
criminals denied the right of suffrage, when.....(Const.) 10 6
judge or clerk of election disclosing vote of any voter—penalty..... 6956 11
shall not open ballot-box, when—penalty..... 7003 14
county clerk failing to transmit abstract of votes—penalty..... 7013 17
penalty on judge or clerk of election for failure to do duty..... 7021 19
on messenger for failing to carry returns..... 7022 19
all penalties to be appropriated to public school fund..... 7073 29
concealing, destroying, etc., tickets—penalty.....7075, 7076 29
corrupt use of telegraph in case of vacancy in nomination—penalty..... 7087 32
fraud touching certificate of nomination—penalty..... 7111 40
destroying supplies of booths, etc.—penalty..... 7112 40
election officer neglecting duty—penalty..... 7113 40
disclosing vote—electioneering—penalty ..... 7114 41
disqualified voter voting, etc., at primary—penalty..... 7128 45
procuring illegal vote—penalty ..... 7129 45
making fraudulent returns—penalty ..... 7130 45
judges and clerks in primary election in cities of 100,000 guilty of misdemeanor, when ..... 7144 47
in primary election in cities of 300,000, voter, guilty of misdemeanor, when.. 7147 48
procuring illegal voter in—penalty ..... 7159 50
fraudulent returns in—penalty ..... 7160 50
judge, clerk or watcher, guilty of misdemeanor, when..... 7161 51
in primary elections in counties with 100,000 inhabitants, judges and clerks violating oath—penalty ..... 7165 52
guilty of misdemeanor, when—penalty..... 7166 52
voter making false statement to judges, guilty of perjury—penalty..... 7166 52
voting more than once—penalty..... 7167 53
candidate offering bribe—penalty ..... 7168 54
in cities of 25,000 and less than 100,000—penalty for corrupt registration, etc.. 7218 72
illegal restrictions in ..... 7217 72
destroying or mutilating registration book—penalty..... 7220 73
justice of county court or other officer failing to perform duty—penalty. 7221 73
in cities of 300,000, judges or clerks willfully absent from polls—penalty..... 7244 86
detaining ballot-box, etc.—penalty..... 7244 86
obstructing view of ballot-box—penalty..... 7245 86
failing to return ballot-boxes, etc., to election commissioners—penalty... 7256 92
impersonation, etc., at registration—penalty..... 7260 94
at the polls—penalty ..... 7261 94
officer of election guilty of fraud—penalty..... 7262 95
tampering with ballot—judge altering ballots—penalty..... 7263 95
breach of the peace ..... 7264 96

25849


| | Sec. | Page |
|---|---|---|
| CRIMES AND PUNISHMENTS—Continued— | | |
| electioneering by election officer—penalty | 7265 | 96 |
| in cities of 100,000, making false affidavits by registry clerk—penalty | 7295 | 118 |
| removal or mutilation of register of voters—penalty | 7307 | 124 |
| detention of poll-books from polls—penalty | 7311 | 125 |
| ballot-boxes to be kept in view—penalty | 7312 | 125 |
| failure to deliver ballot-boxes to election commissioners—penalty | 7328 | 135 |
| offenses and penalties | 7334-7359 | 137 |
| offenses by persons in office or affecting public trusts and rights | 2084-2118 | 150 |
| offenses against public order or public peace | 2139-2149 | 158 |
| carrying concealed weapon | 1862-1863 | 160 |
| betting on elections | 2211 | 161 |
| in cities having special charter—examining ballots a misdemeanor | 6383 | 207 |
| judge or clerk violating law a misdemeanor | 6395 | 210 |
| defacing list of voters a felony | 6397 | 210 |
| (See "Corrupt Practices.") | | |
| CRIMINAL COURTS— | | |
| in cases of tie in election for judge of, governor shall call special election | 7015 | 17 |
| contest in election for judge of, in St. Louis city determined, where | 7067 | 28 |
| proceedings | 7068 | 28 |
| of Jackson county, established, when | (Appendix) | 1 173 |
| qualifications and election of judge of | | 6 173 |
| compensation of | | 6 173 |
| qualifications and election of clerk of | | 9 173 |
| of Buchanan county, established, when | (Appendix) | 1 174 |
| election of judge of | | 8 174 |
| of Fifteenth Judicial Circuit, established, when | (Appendix) | 1 174 |
| election of judge of | | 2 174 |
| of Greene county, established, when | (Appendix) | 1 174 |
| election of judge of | | 8 175 |
| DEPOSITIONS— | | |
| in contested election for county and township officers | 7032 | 21 |
| for senator or representative | 7036 | 22 |
| by whom taken | 7037-7043 | 22 |
| for governor and lieutenant-governor | 7053 | 26 |
| DIRECTORS OF SCHOOLS— | | |
| election of, in common school districts | 9759 | 247 |
| in city school districts | 9863 | 253 |
| in cities of 50,000 and less than 300,000 | 9882 | 256 |
| in cities of 300,000 | 9919 | 262 |
| DISQUALIFICATIONS OF VOTERS— | | |
| being kept at public expense or in prison | (Const.) | 8 5 |
| convicted of crime | (Const.) | 10 6 |
| soldier or marine in U. S. service | (Const.) | 11 6 |
| DRAMSHOPS— | | |
| mayor may close, when | 2149 | 160 |
| election on adoption of local option law | 3027 | 230 |
| ELECTIONS, CONTESTED— | | |
| (See "Contested Elections.") | | |
| ELECTIONS, GENERAL— | | |
| for executive officers—times of holding | (Const.) | 2 3 |
| returns—tie, how determined | (Const.) | 3 3 |
| general, when held | (Const.) | 1 4 |
| viva voce, when | (Const.) | 6 5 |
| for adopting township organization | (Const.) | 8 6 |
| discontinuing same | (Const.) | 9 6 |
| for state officers, held when | 6981 | 8 |

| ELECTIONS, GENERAL—Continued— | Sec. | Page |
|---|---|---|
| for congressmen, senators, representatives, etc | 6982 | 8 |
| in St. Louis city, how conducted | 7005 | 15 |
| on constitutional amendments, how conducted | 7123 | 42 |
| primary | 7127 | 44 |
| in cities of 100,000 inhabitants or over | 7131-7145 | 45 |
| of 300,000 inhabitants or over | 7146-7161 | 48 |
| in counties with a population of 100,000 | 7163-7170 | 51 |
| in cities of 25,000 and less than 100,000, how conducted | 7210 | 71 |
| of 300,000 or over | 7222-7249 | 73 |
| of 100,000 inhabitants or over | 7270-7309 | 97 |
| general canvass | 7329-7333 | 135 |
| offenses in | 7334-7359 | 137 |
| compensation of election officers | 7360-7365 | 147 |
| miscellaneous provisions | 7366-7369 | 149 |
| new senatorial or representative district entitled to hold, when | 8390 | 165 |
| when held, for railroad and warehouse commissioner | 1198 | 166 |
| assessors | 9137 | 166 |
| clerks of courts of record | 513 | 167 |
| probate clerk in St. Louis city | 6244 | 167 |
| constables | 877 | 168 |
| in cities of 300,000 | 6508 | 169 |
| judge, supreme court | 1634 | 169 |
| appeals courts | 1641, 1651 | 170 |
| circuit court | 1673 | 171 |
| probate | 1754 | 171 |
| county | 1773 | 172 |
| court criminal correction, St. Louis city | (Appendix) 3 | 172 |
| criminal court, of Jackson county | 6 | 173 |
| Buchanan county | 8 | 174 |
| Fifteenth circuit | 2 | 174 |
| Greene county | 8 | 175 |
| clerk court common pleas at Sturgeon | 10 | 175 |
| judge court common pleas Cape Girardeau | 5 | 176 |
| collectors | 9203 | 176 |
| justices of the peace | 3867 | 177 |
| in cities of 300,000 | 6508 | 177 |
| prosecuting attorneys | 4944 | 178 |
| circuit attorney, St. Louis city | 4959 | 178 |
| prosecuting and assistant prosecuting attorney, St. Louis city | 4961 | 179 |
| public administrator | 289 | 179 |
| recorder of deeds | 9081 | 180 |
| sheriff and coroner | (Const.) 10 | 181 |
| surveyor | 10176 | 181 |
| treasurer | 6764 | 182 |
| municipal, when held | 6129 | 184 |
| in cities of the first class | 5264 | 184 |
| for bond issue for water-works in cities of 100,000 and less than 300,000 | 6493 | 187 |
| in cities second class | 5701 | 190 |
| for bond issue for improvements | 5564 | 192 |
| to ratify law providing fund for pensioning firemen | 6411 | 193 |
| in cities third class, for officers, when held | 5753 | 193 |
| for drains and sewers | 5876 | 197 |
| in cities fourth class for extension of limits | 5895 | 198 |
| for election of officers | 5896 | 199 |
| in villages, for trustees | 6005 | 201 |
| to elect freeholders to frame special charter in cities of over 100,000 | 6362 | 204 |
| for adopting charter | 6363 | 204 |
| in cities having special charter | 6374 | 205 |
| in counties under township organization | 10241 | 207 |
| forms for certificates of nominations and ballot | | 274-281 |

25850


| | Sec. | Page |
|---|---|---|
| ELECTIONS, PRIMARY— | | |
| defined | 7082 | 31 |
| chairman and secretary of political party to sign certificate of nomination, when | 7083 | 31 |
| | 7127 | 44 |
| judges, clerks and tellers to take oath | 7128 | 45 |
| disqualified voter voting, etc.—penalty | 7129 | 45 |
| procuring illegal votes—penalty | 7130 | 45 |
| making fraudulent returns—penalty | 7127-7145 | 44 |
| in cities of 100,000 and over | 7146-7161 | 48 |
| in cities of 300,00 or over | 7162 | 51 |
| judges of supreme and appellate courts, how nominated | 7162 | 51 |
| nomination void, when | 7163-7170 | 51 |
| in counties with over 100,000 inhabitants | | 275 |
| form for certificate of nomination | | |
| ELECTIONS, SPECIAL— | | |
| to be called by governor in case of tie for member of congress, state senator, judges of courts, etc | 7015 | 17 |
| | 7035 | 22 |
| to determine contests, may be called, when | 6350 | 216 |
| on question of incurring indebtedness by cities and towns | 6503 | 214 |
| for consolidation of cities | 6086-6089 | 215 |
| for issue of bonds for park purposes | 6273-6278 | 218 |
| for street improvements in cities of 10,000 or less | 6466, 6475-6478 | 220 |
| for levying tax for library and building fund | 4906-4911 | 222 |
| to create indebtedness to build and maintain asylums | 5172-5176, 6709-6711 | 225 |
| to build court-house or jail | 6705-6715, 6738-6740 | 228 |
| to divide or form new counties or remove county seat | 5920 | 201 |
| in cities fourth class, how provided for | 6362 | 204 |
| in cities of over 100,000 to elect freeholders to frame special charter | 6363 | 204 |
| for adopting charter | 3027-3030 | 230 |
| on adoption of dramshop local option law | 4783-4790 | 233 |
| to restrain animals | 9461 | 235 |
| roads and highways—for increasing tax levy | 9486 | 236 |
| for opening new road when | 9507-9516 | 237 |
| on adoption of township organization for road purposes | 9561-9564 | 239 |
| for incurring indebtedness for improvements of | 9600 | 241 |
| for adoption of local option road law | 9631 | 242 |
| for adoption of law creating special road districts | 10039 | 243 |
| for adoption of law providing for contract system of working roads in counties under township organization | 9740, 9876 | 244 |
| concerning schools | 9882-9898 | 256 |
| in cities of 50,000 and less than 300,000 | 9919-9940 | 262 |
| in cities of 300,000 and over | 9952-9954 | 264 |
| for annexation of territory adjacent to city district of less than 100,000 | 10225-10229 | 266 |
| to adopt township organization law | | |
| ELECTION COMMISSIONERS— | | |
| shall exercise powers and perform duties of county clerk | 7117 | 41 |
| in cities of 100,000 inhabitants or over, shall give notice of time and place of holding primary election | 7132 | 45 |
| | 7133 | 46 |
| shall divide wards into districts | 7134 | 46 |
| shall provide ballots | 7135 | 46 |
| number of | 7136 | 46 |
| shall provide poll-books | 7138 | 46 |
| shall place names and delegations on ballots, when | 7139 | 46 |
| shall select judges and clerks, how | 7141 | 47 |
| shall deliver poll-books and ballots to convention, when | 7142 | 47 |
| shall issue certificate of election to candidate, when | 7271 | 97 |
| by whom appointed, qualifications, etc | 7272 | 99 |
| shall divide city into election precincts | 7273 | 99 |
| shall provide ballot-boxes, poll-books, etc | | |

| | Sec. | Page |
|---|---|---|
| ELECTION COMMISSIONERS—Continued— | | |
| shall provide for a general registration | 7274 | 99 |
| shall appoint judges and clerks of election | 7275 | 100 |
| shall examine judges and clerks | 7277 | 101 |
| shall report list of judges and clerks to circuit court | 7278 | 101 |
| shall select place of registry and polling places | 7280 | 104 |
| shall furnish lists of criminals and deceased voters to judges of election | 7283 | 105 |
| shall give notice of time and place of registration and election | 7284 | 106 |
| shall make rules and regulations | 7286 | 106 |
| shall make subsequent selection of judges and clerks, when | 7287 | 106 |
| shall hear applications for erasure of names from registry, when | 7298 | 121 |
| shall print and post up supplement to registration lists | 7301 | 122 |
| shall preserve returns of election | 7322 | 131 |
| ballot-boxes to be delivered to | 7326 | 134 |
| duty of, with reference to ballot-boxes | 7327 | 135 |
| shall canvass returns | 7329 | 135 |
| shall announce result and certify same to county clerk | 7330 | 136 |
| duty of, where there is evidence of fraud | 7333 | 136 |
| shall aid in prosecution of certain offenses | 7359 | 147 |
| compensation of | 7360 | 147 |
| shall audit claims | 7365 | 149 |
| may administer oaths | 7366 | 149 |
| may be removed from office for misconduct | 7368 | 149 |
| duty of when county votes on proposition to create indebtedness to build and maintain asylum | 4907 | 222 |
| In cities of 300,000, shall give notice of time and place of holding primary election | 7146 | 48 |
| shall divide wards into districts—polling places | 7148 | 48 |
| shall select judges and clerks of election, how | 7149 | 48 |
| shall permit appointment of watchers, when | 7150 | 49 |
| shall furnish to judges, register of voters | 7151 | 49 |
| shall furnish ballots, booths, etc. | 7152 | 49 |
| shall place names and delegations on ballots, when | 7153 | 49 |
| appointment, qualifications of | 7221 | 73 |
| deputy—powers and duty of board | 7224 | 74 |
| office of—shall provide ballot-boxes, etc.—duties | 7225 | 75 |
| may register, re-register or transfer voters | 7226 | 75 |
| shall divide city into election districts | 7227 | 76 |
| shall prepare for general resigtration | 7228 | 76 |
| shall select judges and clerks of election, when | 7229 | 76 |
| shall cause copies of registry to be made | 7238 | 83 |
| shall sit as a board of appeals | 7242 | 85 |
| shall give notice of registration days | 7243 | 85 |
| shall deliver registry lists, ballot-boxes, etc., to judges, when | 7243 | 85 |
| returns to be certified to, by judges of election | 7252 | 90 |
| shall make abstract of votes—certify same to secretary of state | 7257 | 92 |
| shall make out and deliver certificate of election | 7258 | 93 |
| shall proceed, how, in case fraud in returns is suspected | 7259 | 93 |
| shall aid in prosecuting violation of election law | 7266 | 96 |
| compensation of | 7267 | 96 |
| majority of, may act for board | 7268 | 97 |
| shall audit accounts | 7269 | 97 |
| shall make out abstract of votes and transmit copy to secretary of state | 7257 | 184 |
| shall give successful candidate certificate of election | 7258 | 185 |
| ELECTORS— | | |
| (See "Voters.") | | |
| ELECTORS, PRESIDENTIAL— | | |
| (See "Presidential Electors.") | | |
| EXPENSES OF CANDIDATES— | | |
| amount, how determined | 7179 | 59 |
| statement of filed, where—penalty | 7180 | 59 |
| filed when | 7182 | 60 |

| | Sec. | Page |
|---|---|---|
| FIREMEN, FUND FOR PENSIONING— | | |
| election required in cities second class to ratify law | 6411 | 193 |
| FORMS FOR CERTIFICATE OF NOMINATION AND BALLOT | | 274-281 |
| GENERAL ASSEMBLY— | | |
| returns of election for executive officers to be transmitted to (Const.) | 3 | 3 |
| to be opened and published by (Const.) | 3 | 3 |
| shall determine tie, when (Const.) | 3 | 3 |
| may change day of holding general election, when (Const.) | 1 | 4 |
| shall provide for registration of voters, when (Const.) | 5 | 5 |
| shall provide for trials in contested elections (Const.) | 9 | 5 |
| may deny right of suffrage to criminals (Const.) | 10 | 6 |
| may provide for township organization (Const.) | 8 | 6 |
| may propose amendements to constitution (Const.) | 2 | 7 |
| to open and publish returns of election for state officers | 7018 | 18 |
| shall determine tie, when | 7019 | 19 |
| in contests for election of members of | 7036 | 22 |
| depositions to be certified to speaker of house or president of the senate, when | 7042 | 23 |
| shall reject irrelevant testimony | 7043 | 24 |
| may require county clerk to open, count and compare ballots—result to be certified to whom | 7044 | 24 |
| shall decide contested elections for governor and lieutenant-governor | 7050 | 25 |
| contestor to present petition to | 7051 | 25 |
| shall appoint joint committee—its powers | 7052 | 25 |
| procedure when joint committee reports | 7055 | 26 |
| shall determine tie vote in election of presidential electors | 6623 | 163 |
| shall determine contested elections for presidential electors | 6625 | 163 |
| certificate of election of senator | 8382 | 164 |
| of member of house | 8383 | 164 |
| writ of election to fill vacancy in, to be issued by governor, when | 8387 | 165 |
| how directed | 8388 | 165 |
| duty of sheriff upon receipt of writ | 8389 | 165 |
| new district to hold election for member of, when | 8390 | 165 |
| GOVERNOR— | | |
| term of office (Const.) | 2 | 3 |
| ineligible to re-election (Const.) | 2 | 3 |
| abstract of votes for, to be transmitted to secretary of state | 7011 | 16 |
| shall be present when secretary of state opens and casts up returns | 7014 | 17 |
| shall call special election in case of tie in election for certain officers | 7015 | 17 |
| may order returns sent by special messenger | 7016 | 18 |
| returns of election for, to be delivered to speaker of house | 7018 | 18 |
| tie in election of, how determined | 7019 | 19 |
| to fill vacancy by appointment, when | 7028 | 20 |
| contested election for, how and where decided | 7060 | 25 |
| contestor to present petition to general assembly | 7061 | 25 |
| shall declare by proclamation the ratification of constitutional amendments | 7124 | 43 |
| bonds guaranteeing performance of conditions in case of capital removal, to be filed with | 7125 | 44 |
| deposited, when | 7126 | 44 |
| if unsatisfactory, shall make same public by proclamation | 7126 | 44 |
| shall appoint election commissioners in cities of 300,000 and over | 7223 | 73 |
| in cities of 100,000 and over | 7171 | 97 |
| shall furnish list of pardons to election commissioners | 7281 | 104 |
| returns in election for presidential electors, to be certified to | 6621 | 162 |
| to be cast up by | 6622 | 162 |
| certify tie vote to general assembly | 6623 | 163 |
| shall notify electors of election | 6624 | 163 |
| shall deliver list of names of electors to the electors | 6626 | 163 |

| | Sec. | Page |
|---|---|---|
| GOVERNOR—Continued— | | |
| shall audit their accounts | 6827 | 182 |
| returns of election for clerk Sturgeon court common pleas transmitted to— | | |
| shall commission clerk | 11 | 176 |
| HOLIDAYS—Day of election declared a holiday | 7286 | 196 |
| JUDGES OF COURTS— (See Respective Courts.) | | |
| JUDGES OF ELECTION— | | |
| appointed by voters, when | 6982 | 8 |
| shall be appointed, how | 6986 | 9 |
| shall take oath | 6989 | 9 |
| in cities having registration | 6989 | 9 |
| shall appoint clerks—administer oath | 6990 | 10 |
| shall open polls, when | 6991 | 10 |
| duties of during election | 6995 | 11 |
| shall not disclose vote of any voter—penalty | 6995 | 11 |
| number of, to be appointed | 6996 | 12 |
| to count ballots, how | 6996 | 12 |
| shall not disclose state of polls | 6996 | 12 |
| qualifications of | 6997 | 13 |
| shall sign poll-books, when | 6998 | 13 |
| shall determine fraudulent ballot | 7000 | 13 |
| shall not open ballot-boxes, when—penalty | 7003 | 14 |
| shall transmit one poll-book to county clerk | 7006 | 15 |
| shall retain one | 7006 | 15 |
| penalty for failure to do duty | 7021 | 19 |
| free from arrest, when | 7024 | 19 |
| constable to perform duty under direction of | 7025 | 19 |
| may punish for contempt | 7026 | 20 |
| compensation of | 7072 | 29 |
| ballots to be delivered to | 7099 | 37 |
| additional judges to be appointed | 7101 | 37 |
| two shall have charge of ballots | 7101 | 37 |
| shall deliver ballots to voter—same to be marked, how | 7104 | 38 |
| shall determine when vote is challenged | 7105 | 38 |
| spoiled ballots to be replaced by | 7107 | 38 |
| shall make out ballot for illiterate voter | 7108 | 39 |
| shall not deposit ballot not bearing initials of | 7109 | 40 |
| shall post printed cards of instructions to voters | 7110 | 40 |
| in primaries in cities of 100,000 or over, how appointed | 7139 | 46 |
| compensation of | 7140 | 47 |
| duties of | 7141 | 47 |
| guilty of misdemeanor, when | 7144 | 47 |
| in primaries in cities of 300,000 and over, how appointed | 7149 | 48 |
| compensation of | 7155 | 50 |
| duties of | 7156 | 50 |
| guilty of misdemeanor, when | 7161 | 51 |
| in counties with 100,000 inhabitants, how appointed | 7163 | 51 |
| oath—violation of—penalty | 7165 | 51 |
| in cities of 300,000—how appointed—term of appointment | 7229 | 76 |
| shall constitute a precinct board of registratry | 7231 | 78 |
| duties of, as such | 7231 | 78 |
| shall revise registry, when | 7236 | 80 |
| appeals from, lie to election commissioners | 7237 | 83 |
| shall sign registry—send same to election commissioners | 7238 | 83 |
| when absent, place, how filled—penalty | 7244 | 86 |
| shall be peace officers | 7246 | 87 |
| shall certify returns to election commissioners | 7252 | 90 |
| failing to deliver ballot-boxes, etc.—penalty | 7256 | 92 |
| altering ballot—penalty | 7263 | 95 |
| compensation of | 7267 | 96 |

25852


| | Sec. | Page |
|---|---|---|
| JUDGES OF ELECTION—Continued— | | |
| in cities of 100,000, by whom appointed—qualifications | 7275 | 100 |
| how chosen—penalty for failure to serve | 7276 | 100 |
| examination of—term of service | 7277 | 101 |
| list of, to be reported to circuit court | 7278 | 101 |
| oaths of | 7279 | 104 |
| subsequent selection of | 7287 | 106 |
| shall consitute precinct board of registry | 7288 | 107 |
| as such, powers and duties | 7290-7297 | 107 |
| vacancy on board, how filled | 7308 | 124 |
| absent from polls, vacancy how filled—penalty for detention of poll-books | 7311 | 125 |
| shall keep ballot-boxes in view—penalty | 7312 | 125 |
| duties of judges | 7314 | 126 |
| constituted peace officers | 7317 | 128 |
| duties of, when vote is canvassed | 7318-7326 | 129 |
| penalty for failure to return ballot-boxes to election commissioners | 7328 | 135 |
| misdemeanors of, as judges of election—penalty | 7337 | 140 |
| as canvassers of votes | 7338 | 140 |
| as registration officer | 7340 | 141 |
| stealing, destroying, etc., any records, poll-lists, etc., penalty | 7341 | 141 |
| guilty of illegal registration—penalty | 7351 | 145 |
| absenting himself from polls—penalty | 7352 | 145 |
| electioneering at polling place—penalty | 7353 | 145 |
| compensation of | 7361 | 148 |
| number of days' services credited to | 7362 | 148 |
| city to pay, when | 7363 | 148 |
| county, when | 7364 | 148 |
| may administer oaths | 7366 | 149 |
| exempt from jury service | 7367 | 149 |
| guilty of fraud—penalty | 2116 | 157 |
| neglect of duty a misdemeanor | 2118 | 158 |
| in villages, how appointed | 6047 | 202 |
| appointed by by-standers, when | 6049 | 202 |
| shall determine ties, when | 6053 | 203 |
| in cities having special charter | 6376 | 205 |
| powers and duties | 6378-6383 | 206 |
| JUSTICES OF THE PEACE— | | |
| shall assist county clerk in casting up returns of election, when | 7007 | 15 |
| may call special election to determine ties, when | 7027 | 20 |
| duties of, in contested election for member of legislature | 7036-7043 | 22 |
| shall furnish to election commissioners names of persons convicted of misdemeanors | 7281 | 104 |
| election of—term of office of | 3807 | 177 |
| election, how conducted | 3811 | 177 |
| tie, county court to decide | 3812 | 177 |
| in cities of 300,000, elected, when | 6508 | 177 |
| may order election in cities third class, when | 5754 | 194 |
| in fourth class, when | 5897 | 199 |
| in villages, when | 6054 | 203 |
| KANSAS CITY— | | |
| primary elections in, how held | 7131-7145 | 45 |
| general elections in, how held | 7270-7369 | 97 |
| LAWS, ELECTION—Secretary of state shall furnish | 7004 | 15 |
| LIBRARY AND BUILDING FUND—Cities may levy tax for—proceedings—election | 6466, 6475-6478 | 220 |
| LIEUTENANT-GOVERNOR— | | |
| term of office | (Const.) 2 | 3 |
| abstract of votes for to be transmitted to secretary of State | 7011 | 16 |
| returns of election for, to be delivered to speaker of house | 7018 | 18 |
| tie in election for, how determined | 7019 | 19 |
| contested election for, how and where decided | 7050 | 25 |
| contestor to present petition to general assembly | 7051 | 25 |

Sec. Page

LOCAL OPTION—
dramshops—election on adoption of, how and when held ..... 3937 220
roads and highways, election on adoption of, how and when held ..... 999 52

MAYORS—
may issue proclamation requiring minors to remain indoors, when ..... 2128 124
shall appoint none but citizens to police duty—penalty ..... 2146, 2148 160
may have drawshops closed, when ..... 2149 160

MESSENGERS—
may be sent after poll books by county clerk ..... 7006 15
by secretary of State for returns, when ..... 7012 17
returns in special election may be forwarded by, when ..... 7018 18
compensation of ..... 7020 19
penalty for failure to carry returns ..... 7022 19

MUNICIPAL ELECTIONS—
cities and towns may be incorporated, how ..... 5357 132
property qualification, prohibited ..... 5359 134
when held ..... 5359 134
in cities of the first class, when held ..... 6125 134
abstract of votes, how made—copy to be sent to secretary of State ..... 7264 134
commissioners of election shall deliver certificates of election to persons elected .... ..... 7277 134
elective city officers ..... 7358 135
council to consist of how many ..... 5391 135
tenure of office of ..... 5404 135
house of delegates ..... 5405 135
qualifications of members of ..... 5406 135
additional qualifications of ..... 5407 135
water-works property, how acquired—bonds issued ..... 5408 135
election for bond issue ..... 6402 135
in cities second class—council, how composed and elected ..... 6490 135
aldermen—qualifications of ..... 5492 135
in case of tie vote, council to decide ..... 5506 135
who deemed eligible to office ..... 5527 139
mayor, election of ..... 5528 139
qualifications of ..... 5529 139
tie vote, how determined ..... 5530 139
contested election, how decided ..... 5531 139
vacancy in office of ..... 5532 139
oaths of officers of corporation ..... 5553 139
certificates of election to be recorded ..... 5554 139
general election in, to be held when—how ..... 5701, 5702 150
disposition of acquired territory ..... 5512 151
change not to be made, when ..... 5513 151
election of aldermen when ward lines are changed ..... 5515 151
may issue bonds for public improvements ..... 5560 152
ordinance to be referred to circuit judge ..... 5562 152
notice of election to be given, when ..... 5563 152
election, form of ballot ..... 5564 152
election to ratify law providing fund for pensioning firemen ..... 6411 135
in cities third class, for officers, when held ..... 5753 153
justice of the peace may order election, when ..... 5754 154
elective officers—terms of office ..... 5755 154
qualifications of mayor—contests in election for ..... 5756 154
vacancy in office of mayor, how filled ..... 5766 154
division of city into wards—councilmen ..... 5767 155
qualifications of councilmen ..... 5768 155
vacancy in office, how filled ..... 5780 155
contracts for lighting streets, lamp posts, gas, etc ..... 5845 156
contracts for water, etc.—may operate water-works ..... 5846 156
election on proposition to provide for drains and sewers ..... 5676 157

MUNICIPAL ELECTIONS—Continued— Sec. Page
in cities fourth class—limits may be extended, how ... 5895 197
election of officers in ... 5896 199
justices of the peace shall order election, when ... 5897 199
elective officers in ... 5898 199
mayor, qualifications—tie, how determined ... 5899 200
city to be divided into wards—aldermen to be selected ... 5910 200
qualifications of aldermen—tie, how determined ... 5911 200
qualifications for holding office in ... 5916 200
may elect police judge—his jurisdiction ... 5919 200
providing for special elections in ... 5920 201
in villages—corporate powers vested in trustees—when elected ... 6005 201
qualifications of trustees ... 6006 202
vacancies, how filled ... 6046 202
judges of election in ... 6047 202
notice of election, when given ... 6048 202
judges elected by by-standers, when ... 6049 202
qualifications of voters in ... 6050 202
clerks of election ... 6051 203
opening and closing of polls ... 6052 203
cases of tie, judges of election shall decide ... 6053 203
proceedings in case of failure to elect ... 6054 203
to frame special charter in cities of over 100,000 ... 6359 203
procedure—amendments ... 6359 203
time for electing board of freeholders to frame charter ... 6362 204
election for adoption of charter—notice ... 6363 204
in cities having special charters ... 6374 205
further provisions ... 6375-6398 205
extending limits to include other incorporated city ... 6399 211
farming lands, disincorporation of ... 6257 212
city limits may be extended, how ... 6292 212
election of aldermen ... 6298 213
for consolidation of cities ... 6502-6507 214
to create indebtedness ... 6350-6352 216
for issue of bonds for park purposes ... 6086-6089 217
for street improvements in cities under special charter and of 10,000 or less ... 6273-6278 218
for levying tax for library and building fund ... 6466, 6475-6478 220

NATURALIZATION—Act of Congress concerning ... 269

NOMINATION OF CANDIDATES—
how made ... 7078 30
certificate of, shall contain what ... 7079 30
shall be filed, where ... 7080 30
shall be signed by chairman and secretary of convention ... 7083 31
by chairman and secretary of political party, when ... 7083 31
by voters, when ... 7084 31
shall be preserved ... 7085 32
shall contain name of but one candidate for each office to be filled ... 7086 32
to be filed, when ... 7087 32
in case of vacancy in, when ... 7087 32
vacancy in, filled by central committee, how ... 7088 33
objected to, proceeding ... 7089 34
to be certified to county clerks by secretary of State ... 7090 35
list of, to be arranged by county clerk, how ... 7092 35
error or omission in, how corrected ... 7102 37
fraud in making or filing—penalty ... 7111 40
judges of supreme and appellate courts, how nominated ... 7162 51
void, when ... 7162 51
forms for certificates of ... 274

NOTICES— Sec. Page

of election to fill vacancy—number of days given ... 6988 9
for special election in case of tie for certain officers ... 7015 17
of contest, how served ... 7019 21
to be given by contestee, when ... 7021 23
of new election to determine contest, given when ... 7025 27
in case of contest in election to legislature, shall contain what ... 7026 28
contestee shall give, when ... 7029 31
county clerk shall give, when ballots are to be opened, etc ... 7045 37
of time and place of taking depositions in contested election for governor and lieutenant governor ... 7051 38
of holding primary elections in cities of 100,000 or over ... 7122 6
of 300,000 and over ... 7146 6
in counties of 100,000 ... 7164 32
of days of registration, etc., in cities of 25,000 and less than 100,000 ... 7201 6
of registration and election in cities of 100,000 ... 7264 16
of election for bond issue for water-works in ceratin cities ... 6400 27
in cities second class for improvements ... 5503 28
third class for drains and sewers ... 5476 27
of election in cities of the fourth class, special, to fill vacancies ... 1920 30
in villages, for trustees ... 6048 32
of over 100,000 to elect freeholders to frame charter ... 6302 24
for adoption of charter ... 6302 24
having special charter, of polling places ... 6273 24
to create indebtedness by cities, to be given, when ... 6251 23
for issue of bonds for park purposes ... 6066 27
to levy tax for library and building fund ... 6473 32
of election by counties to create indebtedness to create and maintain asylum 4969 23
to build court-house or jail ... 5170 28
of election on adoption of dramshop local option law ... 3022 22
to restrain animals ... 4787 24
to increase levy for road purposes ... 9461 25
to make levy for opening new road ... 9466 26
of result of election to incur indebtedness for road purposes ... 9571 30
of election to adopt law to create special road districts ... 9631 32
of election to increase school tax levy ... 9779 39

OATHS—

of judges of election ... 6060 9
in cities which have registration ... 6059 9
of clerks of election ... 6060 10

PARKS—Election for issue of bonds for purposes of ... 6066 27

PENALTIES—

to be appropriated to public school fund ... 7072 29
(See "Crimes and Punishments.")

POLITICAL COMMITTEE—

may select a witness to a count of the ballots ... 6966 12
who deemed ... 7190 62
shall appoint treasurer ... 7191 63
duties of ... 7193 64
shall file financial statement when and where ... 7194 64
to be open to inspection ... 7196 65
failing to file—penalty ... 7196 65
failing to perform other duties—penalty ... 7196 65

POLLS—

fixed by sheriff, when ... 6963 5
when opened and closed ... 6991 10
results of election to be proclaimed at, when ... 7002 14
failing to open—voters may select judges ... 7115 41
how designated in primaries in cities of 100,000 or over ... 7133 46
open, when ... 7143 47

25854


| | Sec. | Page |
|---|---|---|
| **POLLS—Continued—** | | |
| how designated in primaries in cities of 300,000 and over | 7148 | 48 |
| open, when | 7154 | 50 |
| in general election in cities of 300,000 and over, to open and close, when | 7244 | 86 |
| in cities of 100,000 and over | 7310 | 124 |
| in villages | 6052 | 203 |
| having special charter | 6375 | 205 |
| **POLL-BOOKS—** | | |
| shall be furnished by whom | 6987 | 9 |
| shall be signed and attested | 6998 | 13 |
| form of | 7003 | 14 |
| shall be transmitted to county clerk by judges | 7006 | 15 |
| judges shall retain one copy | 7006 | 15 |
| **PRECINCTS—** | | |
| county court may establish and alter | 6984 | 8 |
| order, to describe what | 6985 | 9 |
| duty of county clerk | 6985 | 9 |
| of sheriff | 6985 | 9 |
| shall be designated, how | 6986 | 9 |
| **PRESIDENTIAL ELECTORS—** | | |
| electoral districts | 6616 | 161 |
| election of | 6619 | 162 |
| how conducted | 6620 | 162 |
| returns, how certified | 6621 | 162 |
| governor to cast up vote | 6622 | 162 |
| tie vote, how determined | 6623 | 163 |
| governor shall notify electors of election | 6624 | 163 |
| contested election for | 6625 | 163 |
| list of names of, to be delivered to electors by governor | 6626 | 163 |
| compensation of | 6627 | 163 |
| failing to attend, place, how supplied | 6628 | 163 |
| form for certificate of nomination of, by convention | | 274 |
| by primary | | 275 |
| **PRIMARY ELECTIONS—(See "Elections, Primary.")** | | |
| **PROBATE COURTS—** | | |
| in case of tie for judge of, governor shall call special election | 7015 | 17 |
| contested election for judge of, in St. Louis city, determined, where | 7067 | 28 |
| election and term of office of judge of | 1754 | 171 |
| **PROSECUTING ATTORNEYS—** | | |
| in case of tie in election for circuit attorney, governor shall call special election | 7015 | 17 |
| contested election for, determined where | 7069 | 29 |
| election, qualifications and term of office of attorney for criminal court of correction St. Louis city | 3 | 172 |
| election and qualifications of | 4944 | 178 |
| election governed by general laws | 4946 | 178 |
| abstract of votes for, transmitted to secretary of State | 4947 | 178 |
| election of circuit attorney St. Louis city | 4959 | 178 |
| of prosecuting and assistant prosecuting attorney, St. Louis city | 4961 | 179 |
| **PUBLIC ADMINISTRATOR—to be elected, when** | 289 | 179 |
| **PUBLICATIONS—** | | |
| county clerk to publish names of nominees | 7091 | 35 |
| proposed constitutional amendments | 7094 | 36 |
| secretary of State to publish proposed constitutional amendments with session laws—and in newspapers | 7119 | 42 |
| to designate the newspapers | 7120 | 42 |
| (See "Notices.") | | |

Sec. Page

QUALIFICATIONS OF VOTERS.....(Const.) 2 4
of voters generally ..... 694 10
in cities of 300,000 and over ..... 7222 79
of 100,000 and over ..... 7230 107
in villages ..... 960 202

RAILROAD AND WAREHOUSE COMMISSIONERS—
abstract of votes for, to be transmitted to secretary of State..... 7011 16
returns of election for, to be delivered to speaker of house..... 7018 18
tie in election for, how determined..... 7019 19
election and qualifications of ..... 1198 166

RECORDER OF DEEDS—
election and term of office of ..... 9081 190
how conducted ..... 9082 190
tie or contest, how determined ..... 9083 190

REGISTRARS—
in cities of 25,000 and less than 100,000—appointment, election and qualifications ..... 7200 67
deputies—powers ..... 7204 69
compensation of ..... 7209 71
not to be a candidate ..... 7216 73
challenging right of person to register—proceedings..... 7219 73

REGISTRATION—
of voters had, when .....(Const.) 5 5
in cities of 25,000 and less than 100,000.....7197-7221 65
of 300,000 and over .....7222-7243 79
of 100,000 and over .....7270-7309 95
intermediate registration provided for.....7303-7309 125
having special charter .....6386-6396 20

REMOVAL OF COUNTY SEAT—election for.....6712, 6738 22
two-thirds vote necessary ..... 6740 23

REPRESENTATIVES, STATE—
election for, held when ..... 6982
certificate of election—statement as to tax receipt..... 7009
abstract of votes for, to be transmitted to secretary of State..... 7011
in case of tie in election for, governor shall call special election..... 7015
certificate of election of, shall contain what..... 8383
in case of vacancy, governor shall call election..... 8387

RESIDENCE—of voter, not gained or lost, when.....(Const.) 7

RESTRAING ANIMALS—election for .....4783-4790

RETURNS OF ELECTION—
shall be certified to county clerk by judges of election..... 6987
clerk shall forward abstract of, to secretary of State..... 7011
for State officers, to be delivered to speaker of house..... 7018

ROADS AND HIGHWAYS—
elections for road purposes .....9461-9537
to incur indebtedness for improvements of .....9561-9564
for adoption of local option road law..... 9610
to create special road district..... 9631
for adoption of contract system of working, in counties under township orgainzation .....10339

SCHOOL COMMISSIONERS OF COUNTIES—
election of ..... 9803
how determined—commissioned ..... 9804

25855


| | Sec. | Page |
|---|---|---|
| SCHOOL ELECTIONS— | | |
| to organize unorganized territory | 9740 | 244 |
| to form new district | 9742 | 244 |
| to effect loan—method of voting—sale of bonds | 9752 | 246 |
| for directors | 9759 | 247 |
| to increase tax levy for maintaining schools | 9777 | 248 |
| to build school houses | 9778 | 248 |
| for county school commissioner | 9803 | 249 |
| to adopt county supervision | 9810 | 251 |
| for State superintendent of schools | 9854 | 251 |
| to organize a common school district into a city district | 9861 | 252 |
| for directors of | 9863 | 253 |
| for change of boundary lines | 9875 | 254 |
| to annex to school district when corporate limits of city are extended | 9876 | 255 |
| for directors in cities of 50,000 and less than 300,000 | 9882 | 256 |
| for school loan in—method of voting | 9892 | 258 |
| for special levy for sites and buildings | 9895 | 258 |
| for increase of tax levy for maintenance | 9896 | 259 |
| method of conducting, special, in | 9897 | 260 |
| change of boundary lines of | 9898 | 261 |
| for directors in cities of 300,000 and over | 9919 | 262 |
| for increase of taxation | 9940 | 263 |
| for annexation of territory adjacent to city district with a population of 100,000 | 9952 | 264 |
| SECRETARY OF STATE— | | |
| term of office (Const.) | 2 | 3 |
| returns of election for executive officers to be transmitted to (Const.) | 3 | 3 |
| shall furnish election laws to county clerks | 7004 | 15 |
| result of election for State senator to be certified to | 7010 | 16 |
| abstract of votes for certain officers to be transmitted to | 7011 | 16 |
| may send special messenger after abstract of votes | 7012 | 17 |
| shall direct prosecution when clerk fails to transmit abstract of votes | 7013 | 17 |
| duties of, when returns are in | 7014 | 17 |
| shall certify list of members—elect to legislature | 7017 | 18 |
| shall deliver to speaker of House returns of election for State officers | 7018 | 18 |
| in case of tie, certificate of election of member of legislature to be deposited with, by speaker | 7019 | 19 |
| contested election for, determined, where | 7056 | 26 |
| contestor to present petition, when | 7057 | 26 |
| certificates of nomination for state and district offices to be filed with | 7080 | 30 |
| to be preserved by | 7085 | 31 |
| to be filed with, when | 7087 | 32 |
| to fill vacancy in, to be filed with, when | 7087 | 32 |
| notice of, to be sent to county clerk and election commissioners | 7087 | 32 |
| objected to, duty of | 7088 | 34 |
| shall certify names of candidates, etc., to county clerks, when | 7090 | 35 |
| shall not certify names, when | 7093 | 35 |
| shall certify constitutional amendments to be submitted, to county clerk, when | 7094 | 36 |
| shall publish proposed constitutional amendments with session laws | 7119 | 42 |
| posters of, to be furnished county clerks by | 7119 | 42 |
| shall print in newspapers, how often | 7119 | 42 |
| same to be designated by | 7120 | 42 |
| paid how | 7120 | 42 |
| shall number same, how | 7121 | 42 |
| shall certify proper form of ballot | 7122 | 42 |
| returns of election on, to be certified to | 7123 | 43 |
| result to be certified to governor | 7124 | 43 |

SECRETARY OF STATE—Continued— Sec. Page

shall refuse to file certificate of nomination of judge of supreme or appellate courts, when ..... 7182
statement of expenses of candidates to be filed with ..... 7190
oath and bond of election commissioners to be filed with ..... 7222
in cities of 300,000 and over, abstract of votes to be certified to by election commissioners ..... 7227
of 100,000, to be transmitted to, by county clerk ..... 7230
may send special messenger after returns in election for presidential electors ..... 9621
abstract of votes for prosecuting attorney to be transmitted to ..... 4967
for circuit attorney St. Louis city ..... 4969
abstract of votes cast in city first class, to be certified to, by whom ..... 7257

SENATORS, STATE—

election of, when held ..... 6962
duty of county clerk in certifying election of ..... 7010
abstract of votes for, to be transmitted to secretary of State ..... 7011
in case of tie, governor shall call special election ..... 7015
certificate of election of ..... 8302
in case of vacancy in office of ..... 8307
form for certificate of nomination of ..... 27

SEWERS AND DRAINS—election to provide for in cities third class ..... 5876

SHERIFFS—

election of, when held ..... 6962
shall fix polling places, when ..... 6963
duty of, when court establishes or alters precinct ..... 6965
shall give notice of writs of election ..... 6968
shall provide ballot-boxes ..... 6966
shall deliver ballots to judges of election ..... 7099
shall appoint none but residents, special deputies ..... 2140
shall not import into this State persons to perform duties of deputies, etc ..... 2141
penalty ..... 2143
impersonating, penalty ..... 2142
shall appoint none but citizens deputies ..... 2145
penalty ..... 2148
shall determine tie in election of judge of county court ..... 1773
election and term of office of ..... (Const.) 10
certificate of election of, to be given by county clerk ..... 10004

SOLDIERS AND MARINES—disqualified as voters ..... (Const.) 11

SPECIAL CHARTERS—(See "Municipal Elections.")

SPECIAL ELECTIONS—(See "Elections, Special.")

ST. LOUIS CITY—

elections in, conducted how ..... 7005
contested elections for judges of criminal and probate courts in, determined where ..... 7067
for circuit or assistant circuit attorney ..... 7069
general election law applicable to, when ..... 7074
primary elections in, how held ..... 7106-7163
general ..... 7222-7269

SUPERINTENDENT OF PUBLIC SCHOOLS—

term of office ..... (Const.) 2
abstract of votes for, to be transmitted to secretary of State ..... 7011
returns of election for, to be delivered to speaker of House ..... 7018
tie in election for, how determined ..... 7019
contested election for, determined, where ..... 7066
contestor to present petition, when ..... 7067
election for, when held ..... 9854

25856


| | Sec. | Page |
|---|---|---|
| **SUPREME COURT—** | | |
| abstract of votes for judges of, to be transmitted to secretary of State | 7011 | 16 |
| in tie for election of judge of, governor shall call special election | 7015 | 17 |
| shall determine contested election for judges of courts and certain State officers | 7066 | 26 |
| petition to be presented, when | 7067 | 26 |
| shall appoint commissioner to take testimony | 7068 | 27 |
| judge of, how nominated | 7162 | 51 |
| nomination void, when | 7162 | 51 |
| election and term of office of judge of | 1634 | 169 |
| **SURVEYOR—election and term of office of** | 10176 | 181 |
| **TERMS OF OFFICE—** | | |
| of executive officers (Const.) | 2 | 3 |
| of other State and county officers | 166-152 | |
| **TIES—** | | |
| in election for executive officers, how determined (Const.) | 2 | 3 |
| for certain offices, governor to call special election | 7015 | 17 |
| for certain State offices | 7019 | 19 |
| to be determined by special election called by county clerk or justice of the peace, when | 7027 | 20 |
| for presidential electors | 6833 | 163 |
| for judge county court | 1773 | 172 |
| for justices of the peace, county court to decide | 3812 | 177 |
| for recorder of deeds, new election shall be ordered | 9063 | 180 |
| for county treasurer, how decided | 6768 | 182 |
| for mayor city third class, council to decide | 5786 | 194 |
| fourth class, board of aldermen to decide | 5899 | 200 |
| for aldermen | 5911 | 200 |
| for trustees in villages, judges of election to decide | 6963 | 203 |
| **TOWNSHIP ORGANIZATION—** | | |
| counties may organize under, when (Const.) | 8 | 6 |
| may discontinue under, when (Const.) | 9 | 6 |
| election for adoption of | 10025-10029 | 206 |
| elections in counties after adoption of, method | 10041-10049 | 207 |
| **TREASURERS, COUNTY—** | | |
| election and term of office | 6764 | 182 |
| how governed and determined—tie, how decided | 6765 | 182 |
| **TREASURER, STATE—** | | |
| term of office (Const.) | 2 | 3 |
| ineligible to re-election (Const.) | 2 | 3 |
| abstract of votes for, to be transmitted to secretary of State | 7011 | 16 |
| returns of election for, to be delivered to speaker of House | 7018 | 18 |
| tie in election for, how determined | 7019 | 19 |
| contested elections for, determined, where | 7066 | 26 |
| contestor to present petition, when | 7067 | 26 |
| **VACANCIES—** | | |
| governor to fill by appointment, when | 7028 | 20 |
| in nomination of candidates, filled, how | 7087 | 32 |
| when, by central committee—powers | 7088 | 33 |
| **VILLAGES—(See "Municipal Elections.")** | | |
| **VOTES—** | | |
| shall be cast by ballot | 6992 | 10 |
| how counted | 6996 | 12 |
| shall be entered in poll book | 6999 | 13 |
| county clerk shall cast up | 7007 | 15 |
| abstract of, to be transmitted to secretary of State | 7011 | 16 |
| envelope indorsed, how | 7011 | 16 |

| | Sec. | Page |
|---|---|---|
| VOTES—Continued— | | |
| in cities of 300,000, when and how canvassed | 7249 | 88 |
| ballots, how counted | 7257 | 92 |
| abstract of, to be certified to secretary of State | 7257 | 92 |
| in cities of 100,000, how canvassed | 7318 | 120 |
| abstract of, to be certified to secreatry of State by county clerk | 7320 | 126 |
| attempt to cast illegal, a misdemeanor | 2115 | 157 |
| VOTERS— | | |
| qualifications of | (Const.) | 2 4 |
| free from arrest, when | (Const.) | 4 5 |
| registration of, had, when | (Const.) | 5 5 |
| residence not gained or lost, when | (Const.) | 7 5 |
| who disqualified as | (Const.) | 5 5 |
| may appoint judges of election, when | 6982 | 1 |
| qualifications of | 6994 | 10 |
| free from arrest, when | 7024 | 19 |
| shall sign certificates of nomination, when | 7064 | 31 |
| shall be bona fide supporters of candidate | 7064 | 31 |
| shall not join in nominating more than one nominee for each office | 7066 | 32 |
| directions to, when voting | 7105 | 39 |
| may be challenged | 7105 | 39 |
| only one to occupy booth at one time | 7105 | 39 |
| illiterate, judge shall prepare ballot for | 7105 | 39 |
| shall not electioneer within 100 feet of polling place—penalty | 7114 | 41 |
| may select judges of election when polls are not opened on time | 7115 | 41 |
| disqualified, voting, etc., at primary—penalty | 7128 | 45 |
| in primary in county with 100,000 inhabitants, guilty of perjury, when—penalty | 7166 | 52 |
| voting more than once—penalty | 7167 | 52 |
| entitled to registration in cities of 25,000 and less than 100,000, when | 7201 | 66 |
| qualifications of, in cities of 300,000 | 7220 | 79 |
| of 100,000 | 7220 | 107 |
| in cities of 300,000, none but registered voters can vote | 7247 | 87 |
| of 100,000 | 7315 | 127 |
| accepting bribe a misdemeanor | 2092 | 153 |
| offering bribe to, a misdemeanor | 2093 | 153 |
| intimidation of | 2110 | 156 |
| defrauding | 2111 | 156 |
| importing fraudulent | 2113 | 156 |
| WATER-WORKS— | | |
| cities of 100,000 and less than 300,000 may issue bonds to acquire | 6492 | 186 |
| election for bond issue | 6493 | 187 |
| ballots shall contain what | 6494 | 188 |
| bonds, issue | 6495 | 188 |
| in cities third class, how operated | 5576 | 197 |
| WRITS— | | |
| of election to fill vacancy—number of days' notice | 6988 | 9 |
| how directed in case of vacancy in house or senate | 8388 | 165 |
| duty of sheriff in serving | 8389 | 165 |

Page
91
92
92
129
136
157

4
5
5
6
6
10
19
21
21
22
28
28
29
29
41
41
45

52
53
68
79
107
87
127
153
153
156
156
156

186
187
188
188
197

9
205
205

25857

# Supreme Court of the United States.

No. 258.—October Term, 1900.

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| Isaac M. Mason, Auditor of the City of St. Louis, Missouri, Plaintiff in Error, *vs.* The State of Missouri ex rel. James McCaffery et al. | In error to the Supreme Court of the State of Missouri. |

[December 10, 1900.]

By an act of the general assembly of the State of Missouri, approved on May 31, 1895, provision was made for the registration of voters in cities which then had or thereafter might have a population of over one hundred thousand inhabitants. This law became operative in the cities of St. Louis, Kansas City and St. Joseph. On June 19, 1899, the governor of Missouri approved an act of the general assembly, known as the Nesbit law, which made provision for the registration of voters in cities in Missouri which then had or might thereafter have a population of over three hundred thousand inhabitants. At the time the Nesbit law went into operation it affected only the city of St. Louis, which was the only city in Missouri having a population of over three hundred thousand inhabitants.

The defendant relators were appointed a board of election commissioners under the Nesbit law, and certain expenditures having been incurred in carrying the law into effect, the board applied to the plaintiff in error, in his official capacity as auditor of the city of St. Louis, to examine, audit and pass upon the accounts of the board, as required by law. Compliance with such request having been refused, the present litigation was commenced by the filing on January 5, 1900, in the Supreme Court of Missouri of a petition for a writ of mandamus, to compel the performance by the plaintiff in error of the duty in question. An alternative writ having issued, a return was filed, in which it was averred that the law under which the relators claimed to act was void, because repugnant both to the constitution of Missouri and the Constitution of the United States. The incompatibility between the law in question and the Constitution of the United States was rested upon the contention that the provisions of the law "deprives the citizens of the United States residing in the city of St. Louis of their right to the equal protection of the laws, and imposes on citizens of said city unconstitutional requirements as preliminary to their right to vote and hold office."

Issue having been joined by the filing of a reply, the matter was heard by the Supreme Court of Missouri, and that court awarded a peremptory writ. (55 S. W. Rep. 636.) It also overruled a petition for a rehearing.

A writ of error was thereupon allowed by the Chief Justice of the State Supreme Court.

As the most convenient form of stating the contentions of the plaintiff in error, we excerpt from the brief of counsel a statement of the proposition relied on:

"We maintain that this Nesbit law does deny to the citizens of St. Louis the equal protection of the laws in these respects:

"(*a*) It denies them the right of appeal to any court from the action of the precinct boards of registration and from the action of the board of election commissioners, in striking their names from the registration lists, as qualified voters, while in cities of 100,000 inhabitants and up to 300,000 inhabitants, under the provisions of the law of 1895, this right is secured. It is secured so completely by the last named law that an appeal lies even to the highest court of the State.

"(*b*) It denies them the right of appeal to any court or judicial tribunal from the action of the precinct boards of registration or from the action of the election commissioners in admitting to registration or in refusing to strike from the registration lists of qualified voters persons who are not entitled to register or to vote—a right secured to all citizens by the law of 1895 in cities and counties of 100,000 and not exceeding 300,000 inhabitants.

"(*c*) It allows a partisan board to add hundreds and even thousands of names to the registration lists, which names are unknown to the voters till the day of election, and have been subjected to no canvass as to their right to remain on the lists as registered qualified voters. If a citizen of St. Louis registers in his own precinct, under the Nesbit law, or names are placed on the registration lists in the precinct by the precinct boards of registration during the three days allowed by the law for registration in the precinct, the Nesbit law requires, as does the law of 1895, that the clerks, representing parties of opposite politics, shall go together to each house or room from which the party registers, and ascertain, by personal inquiry, whether or no the party registered actually resides at that place.

"But if the party has registered at the office of the board of election commissioners, which he may do on all such days on which registration is not conducted in the precincts, which days of precinct registration are the Tuesday four weeks before the election, the Saturday following, and the third Tuesday before the election, and which he may do even on the Thursday, Friday and Saturday immediately preceding the election—there is no canvass or examination whatever provided by the Nesbit law of his right to do so; his name is placed on the registration and poll books by the commissioners, their deputy or clerks—all appointed by vote of a majority of the board—and it appears on the day of election as the name of a qualified voter of the precinct. Thus a marked distinction is made by the Nesbit law between those who register or have their names placed on the registration lists at the office of the election commissioners and those who register in their own precinct. The latter are subjected to close and bi-partisan scrutiny; the former go unchallenged and uncontested. Under the law of 1895 this cannot occur, for no registration under that law can be made in the office of the board of election commissioners, but all must be made in the several precincts, and all is subject to rigid bi-partisan scrutiny and canvass. This latter is the law in all cities of 100,000 and up to 300,000

inhabitants, and the former is the Nesbit law for all cities—meaning St. Louis alone—of over 300,000 inhabitants.

"(*d*) Under the Nesbit law the judges and clerks of election for each precinct, who are also the registration and canvassing officers for those precincts, are all appointed by vote of a majority of the board of election commissioners—a majority necessarily partisan. This majority selects them arbitrarily—true, the law says they shall be of 'opposite politics'—but whether of opposite politics or not, whether fit persons or not, whether intelligent or not, is left to the uncontrolled, arbitrary and exclusive determination of the majority of the board. This in St. Louis alone. In all other cities of 100,000 and up to 300,000 inhabitants 'the commissioner or commissioners shall select the judges and clerks to represent the party to which said commissioner or commissioners belong,' and the person selected shall be intelligent, educated, &c., and 'shall be recognized members of the party from which selected.' The names of those selected shall be filed in the Circuit Court and published, and any elector may file objections to the persons so selected and have his objections heard and determined by the court. If sustained, new names are submitted by the commissioners until fit persons are secured; and that being done, the appointments made by the commissioners are confirmed by the court. The court names no one; it only hears and passes on names objected to, and then confirms the approved appointees of the commissioners.

"(*e*) The Nesbit law is so partisan as to deny to all citizens in St. Louis, not members of the political party to which the two majority members of the board belong, the equal protection of the law. This is apparent on the face of the law. In this respect it is in strong contrast with the law of 1895. In our statement we have set forth the leading features of the two laws and we will not repeat them here, but refer to that statement in support of this proposition. Where a State recognizes political parties by its laws as does the State of Missouri by numerous provisions, then it must do so equally for all—it must grant to all its citizens equality of right and protection—and this it has done in the enactment of this Nesbit law; and in that has violated the Fourteenth Amendment to the Constitution of the United States. It has done this, not only as between St. Louis and all other cities of over 100,000 inhabitants, but in St. Louis itself it has made such distinction between parties in that city as to deprive all citizens of that city who are not members of the political party to which the majority of the board belongs of the equal protection of the law.

"(*f*) The Nesbit law involves a denial of the equal protection of the laws, in that it provides penalties which are different in degree and character for offenses than are prescribed for the same offenses by the law of 1895 and by the general statutes of the State; that is, the same offense committed in the city of St. Louis is punished one way under the Nesbit law; if committed in Kansas City or St. Joseph, or in any other city of 100,000 and not having 300,000 inhabitants, it is punished in another way under the law of 1895; and if committed in the State at large it is punished in yet another way under the general laws. Furthermore certain acts are crimes if committed in one locality in the State, but not so when committed in another.

* * * * * * *

"(*g*) The law also imposes unconstitutional requirements on the citizens of St. Louis as requisite to the right to vote, in that it provides that a voter shall have resided in his election precinct at least 20 days prior to the

election, and is not 'directly interested in any bet or wager depending upon the result of the election.' No such requirements are in article 8 of the State constitution; to enforce them on the citizens of St. Louis is for the legislature to attempt to add tests to them not authorized by the State constitution and not applied to the other citizens of this State."

Mr. Justice WHITE, after making the foregoing statement, delivered the opinion of the Court.

The constitution of Missouri in force at the time of the enactment of the law of June 19, 1899, usually referred to as the Nesbit law, in addition to prescribing certain qualifications as necessary to the right to vote, empowered the general assembly of the State to "provide by law for the registration of voters in cities and counties having a population of more than one hundred thousand inhabitants;" and further directed that the general assembly "may provide for such a registration in cities having a population exceeding twenty-five thousand inhabitants and not exceeding one hundred thousand, but not otherwise." A law approved May 13, 1895, applied to all cities having a population in excess of one hundred thousand inhabitants, and before the adoption of the Nesbit law, the act of 1895 was operative in the city of St. Louis. The Nesbit law, which applied to cities having a population of over three hundred thousand inhabitants, necessarily withdrew the city of St. Louis from the operation of the earlier statute.

The contention that the Nesbit law denied to citizens of St. Louis the equal protection of the laws, in violation of the first section of the Fourteenth Amendment to the Constitution of the United States, is based upon certain propositions, elaborated in the argument of counsel, which we have reproduced in the statement of the case.

The assertions referred to, it must be borne in mind, are made by a public official, who is seeking to avoid the performance of duties enjoined upon him by the law in question, and who does not allege that any particular rights possessed by him as an individual have been expressly invaded. Whether under the ruling in *Wiley* v. *Sinkler*, (179 U. S. ———,) the plaintiff in error could properly raise the objection in question, we shall not determine, in view of the fact that the Supreme Court of Missouri entertained and considered the question whether the law in question violated the Constitution of the United States.

In its final analysis it is apparent that the reasoning urged to sustain the propositions relied on must rest upon the assumption that under the constitution of Missouri but one registration law can be enacted applicable to cities having a population in excess of one hundred thousand inhabitants, whatever the maximum number of inhabitants may be; that, as a natural consequence, the citizens of St. Louis cannot be classified separately from cities having a population in excess of one hundred thousand

but less than three hundred thousand inhabitants, and that as the law of 1895 more effectually protected the exercise of the right and privilege of voting, and threw about the enjoyment of the right of suffrage greater safeguards than does the later law, therefore the last enactment denies to the citizens of the city of St. Louis the equal protection of the laws.

But the State Supreme Court has, in this case, decided that the provision of the State constitution respecting the enactment of registration laws does not limit the power of the general assembly to create more than one class composed of cities having a population in excess of one hundred thousand inhabitants, and hence that the Nesbit law was not repugnant to the State constitution. This conclusion must be accepted by this court. (*Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 566; *Merchants' Bank* v. *Pennsylvania*, 167 U. S. 461, 462, and cases cited.)

In one aspect the argument urged against the validity of the provisions of the Nesbit law depends merely on comparison of the requirements of that law with the act of 1895. All the other contentions are reducible to the proposition that a violation of the Fourteenth Amendment to the Constitution of the United States has resulted from the putting in force by the general assembly of Missouri, in cities having a population of over three hundred thousand inhabitants, of a registration law which, in the mind of a judicial tribunal, may not as effectually safeguard the right and privilege of voting as might be devised, considered alone or with reference to a prior enactment.

But the obvious answer is that the law in question has been declared to be valid under the constitution of the State. The general right to vote in the State of Missouri is primarily derived from the State, (*United States* v. *Reese*, 92 U. S. 114;) and the elective franchise, if one of the fundamental privileges and immunities of the citizens of St. Louis, as citizens of Missouri and of the United States, is clearly such franchise "as regulated and established by the laws or constitution of the State in which it is to be exercised." (*Blake* v. *McClung*, 172 U. S. 249, quoting from the opinion of Mr. Justice Washington at circuit in *Corfield* v. *Coryell*, 4 Wash. C. C. 380.) The power to classify cities with reference to their population having been exercised in conformity with the constitution of the State, the circumstance that the registration law in force in the city of St. Louis was made to differ in essential particulars from that which regulates the conduct of elections in other cities in the State of Missouri, does not in itself deny to the citizens of St. Louis the equal protection of the laws. Nor did the exercise by the general assembly of Missouri of the discretion vested in it by law give rise to a violation of the Fourteenth Amendment to the Constitution of the United States. (*Chappell Chemical Co.* v. *Sulphur Mines Co.*, 172 U. S. 474, 475, and cases cited; *Maxwell* v. *Dow*, 176 U. S. 581, 598.)

*Judgment affirmed.*